

U. S. CIRCUIT  
COURT OF APPEALS



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# LAW DICTIONARY

AND

## GLOSSARY:

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL

### TERMS OF THE COMMON AND CIVIL LAW,

TOGETHER WITH TRANSLATIONS AND EXPLANATIONS OF THE VARIOUS

### TECHNICAL PHRASES

IN DIFFERENT LANGUAGES, OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND STANDARD TREATISES.  
EMBRACING, ALSO, ALL THE PRINCIPAL COMMON AND CIVIL

### LAW MAXIMS.

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COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY, AND ADAPTED TO THE

### JURISPRUDENCE OF THE UNITED STATES;

WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL.

BY

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*Vetus origines rationesque [Labeo] percalluerat; eaque præcipue scientia ad enodandos plerosque juris laqueos utebatur.—A. GELLIIUS, Noct. Att. xiii. 10.*

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# LAW DICTIONARY

AND

## GLOSSARY.

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### H.

H is sometimes used in some Law Latin words in which it is more generally and properly omitted; thus, *Ostium* is sometimes written *Hostium*; *Coercio*, *Cohertio*; *Abundanti*, *Habundanti*; and the like. So, on the other hand, it is sometimes omitted where it should properly be used; thus, *Hutesium* occurs occasionally in the form *Utesium*, *Hypotheca* as *Ypotheca*, *Horreum* as *Orreum*, *Hordeum* as *Ordeum*, and the like.

HABE, (or HAVE.) Lat. A form of the salutatory expression *Ave*, (hail,) in the titles of the constitutions of the Theodosian and Justinianean codes. *Prateus. Calv. Lex. Spelman.* See *Have*.

HABEAS CORPUS. L. Lat. (You have the body.) The name given to a variety of writs, (of which these were anciently the emphatic words,) having for their object to bring a party before a court or judge. The common *capias* is, in this general sense, a *habeas corpus*, the writ in the original Latin commanding the sheriff to take the defendant, "so that you have his body," &c., (*ita quod habeas corpus ejus*, &c. ;) and, according to Mr. Reeves, it was originally so called. 2 *Reeves' Hist. Eng. Law*, 439. The term, however, is now exclusively used to designate a few special writs, employed in English and American practice, among which the writ to inquire into the cause of a person's imprisonment or detention by another, with the view to obtain his or her liberation,

(technically called a *habeas corpus ad subjiciendum*,) is the most celebrated. See *infra*.

HABEAS CORPUS AD RESPONDENDUM. L. Lat. (You have the body, to answer.) In English practice. A writ which issues where one has a cause of action against another, who is confined by the process of some inferior court, in order to remove the prisoner, and charge him with this new action in the court above. 3 *Bl. Com.* 129. 3 *Steph. Com.* 693. 1 *Tidd's Pr.* 349.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM. L. Lat. (You have the body, to do and receive.) In practice. A writ which issues out of any of the courts of Westminster Hall in England, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court; commanding the inferior judges to *produce the body* of the defendant, together *with* the day and *cause* of his caption and detainer; (whence the writ is frequently denominated a *habeas corpus cum causa*,) *to do and receive* whatsoever the king's [or queen's] court shall consider in that behalf. 3 *Bl. Com.* 130. 3 *Steph. Com.* 694, and notes *ibid.* 1 *Tidd's Pr.* 404. A similar writ has been sometimes used in American practice. See *United States Digest*, Habeas corpus.

HABEAS CORPUS AD PROSEQUENDUM. L. Lat. (You have the body, to prosecute.) In English practice. A writ which issues when it is necessary to

remove a prisoner, in order to be tried in the proper jurisdiction wherein the fact was committed. 3 *Bl. Com.* 130. 3 *Steph. Com.* 694.

**HABEAS CORPUS AD SATISFACIENDUM.** L. Lat. (You have the body, to satisfy.) In English practice. A writ which issues when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution. 3 *Bl. Com.* 129, 130. 3 *Steph. Com.* 693. 1 *Tidd's Pr.* 350.

**HABEAS CORPUS AD SUBJICIENDUM.** L. Lat. (You have the body, to submit to.) In practice. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, [or person detained,] with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*, to do, submit to and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 *Bl. Com.* 131. 3 *Steph. Com.* 695. This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law. 3 *Bl. Com.* 129. 1 *Id.* 135. 1 *Steph. Com.* 135. It was a common law writ, but was confirmed and extended by the statute 31 Car. II. c. 2, commonly called the Habeas Corpus Act. *Crabb's Hist.* 525. In modern practice, it is extensively used as a means of obtaining the possession of the persons of women and infants, by parties claiming to be entitled to their legal custody. *Macpherson on Infants*, 152—163, part i. c. xv. See *United States Digest*, Habeas corpus.

**HABEAS CORPUS AD TESTIFICANDUM.** L. Lat. (You have the body, to testify.) In practice. A writ to bring a witness into court, when he is in custody at the time of a trial, commanding the sheriff to have his body before the court, to testify in the cause. 3 *Bl. Com.* 130. 2 *Tidd's Pr.* 809.

**HABEAS CORPUS CUM CAUSA.** L. Lat. (You have the body, with the cause.) In practice. Another name for the writ of *habeas corpus ad faciendum et recipiendum*, (q. v.) 1 *Tidd's Pr.* 348, 349.

**HABEAS CORPUS ACT.** The English statute of 31 Charles II. c. 2, providing the great remedy for the violation of personal liberty, by the writ of *habeas corpus*

*ad subjiciendum*, and which is frequently considered as another *Magna Charta* of the kingdom. 3 *Bl. Com.* 135—137. 1 *Id.* 137. For a summary of its provisions, see 3 *Steph. Com.* 699, 702. This statute has been re-enacted or adopted, if not in terms, yet in substance and effect, in all the United States. 2 *Kent's Com.* 27, and note. *Id.* 28—31.

**HABEAS CORPORA JURATORUM.** L. Lat. (You have the bodies of the jurors.) In English practice. A compulsive process awarded against jurors in the Court of Common Pleas, commanding the sheriff to *have their bodies* before the court on the day appointed. It is the same with the *distringas*, issued in the Queen's Bench. 3 *Bl. Com.* 354. 3 *Steph. Com.* 590. 3 *Chitt. Gen. Pr.* 796, 797. See *Distringas juratores*.

**Habemus optimum testem confitentem reum.** We have the best witness—a confessing defendant. 1 *Phill. Evid.* 397. *Burr. Circ. Evid.* 496. "What is taken *pro confesso* is taken as indubitable truth. The plea of guilty by the party accused, shuts out all further inquiry. *Habemus confitentem reum* is demonstration, unless indirect motives can be assigned to it." Lord Stowell, 2 *Hagg.* 315.

**HABENDUM.** L. Lat. [*L. Fr. à aver.*] (To have.) In conveyancing. One of the eight formal and orderly parts of a deed, following immediately after the premises; so called from the Latin word *habendum*, with which it commenced, and literally translated and retained in modern deeds, in the clause beginning with the words "*To have and to hold.*" Its original object was to determine the interest granted, or to lessen, enlarge, explain or qualify the premises; or, according to Lord Coke, to name again the feoffee, and to limit the certainty of the estate. 2 *Bl. Com.* 298. 4 *Kent's Com.* 468. *Co. Litt.* 6 a. *Hale's Anal.* sect. xxxv. *Shep. Touch.* 75. See *infra*. In modern deeds, the premises usually contain the specification of the estate granted, and hence the *habendum* has become in most cases a mere form; but where no estate is mentioned in the premises, the *habendum* continues to retain its original importance. 4 *Kent's Com.* 468. See *Shep. Touch.* (by Preston,) 76.

\* \* The following form of an ancient deed, from Bracton, will serve to illustrate the original use and importance of the *habendum*. *Sciant præsentes et futuri, quod*

*ego talis, dedi et concessi, et hac presenti carta mea confirmavi tali, pro homagio et servitio suo, tantam terram cum pertinentiis in tali villa: HABENDAM et tenendam tali et heredibus suis, generaliter vel cum coarctatione heredum, liberè et quiete, &c.* Know [all] men, present and future, that I, (such a one,) have given and granted, and by this my present charter have confirmed to (such a one,) in consideration of his homage and service, (so much land,) with the appurtenances, in (such a town:) To HAVE and to hold to (such a one,) and his heirs, (generally, or with a limitation of heirs,) freely and quietly, &c. *Bract.* fol. 34 b, 35. See *Fleta*, lib. 3, c. 14, § 5. See also the forms in Littleton, sect. 371, 372. It will be seen that, in this example, Bracton uses the word *habendam*, agreeing grammatically with *terram*; but this is disregarded in other instances, (see *infra*.) and *habendum*, as a word of more general application, has become established in the later forms.

**HABENDAS ET TENENDAS.** L. Lat. In old English law. To have and to hold. *Concessimus etiam omnibus liberis hominibus regni nostri, pro nobis et heredibus nostris in perpetuum, omnes libertates subscriptas, habendas et tenendas, eis et heredibus suis, de nobis et heredibus nostris in perpetuum*; we have also granted to all the freemen of our realm, for us and our heirs forever, all the liberties underwritten; to have and to hold to them and their heirs, of us and our heirs forever. *Mag. Cart.* 9 Hen. III. c. 1.

**HABENDUM ET TENENDUM.** L. Lat. In old conveyancing. To have and to hold. Formal words in deeds of land from a very early period. *Bract.* fol. 17 b.

**HABENTES HOMINES.** L. Lat. In old English law. Rich men; literally, having men. 1 *Mon. Angl.* 100. *Dufresne*. The same with *fæsting-men*, (q. v.) *Cowell*.

**HABERE.** Lat. In the civil law. To have. Sometimes distinguished from *tenere*, (to hold,) and *possidere*, (to possess;) *habere* referring to the right, *tenere* to the fact, and *possidere* to both. *Calv. Lex.* *Habetur, quod peti potest*; that is had, which can be demanded. *Dig.* 50. 16. 143. See *Id.* 50. 16. 164. 2. *Id.* 50. 16. 188. So *habere* was otherwise distinguished as referring to incorporeal things, *tenere* to corporeal, and *possidere* to both. *Calv. Lex.* *Prateus*.

*Habere contractum*; to have a contract; to contract. *Calv. Lex.*

*Habere in procinctu*; to have in readiness. *Id.*

*Habere venale*; to sell. *Id.*

**HABERE.** Lat. In old English law. To have. *Habere ad rectum*; to have one [forthcoming] to [answer] an accusation. *Bract.* fol. 124 b.

This term frequently occurs in the Year Books, as used by the court in granting any relief prayed. *Habeant auxilium*; let them have aid. M. 3 Edw. III. 37. *Habeat etatem*; let him have his age. *Id.* 38.

**HABERE FACIAS POSSESSIONEM.** L. Lat. (You cause to have possession.) In practice. A writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. 3 *Bl. Com.* 412. 2 *Tidd's Pr.* 1244. *Chitt. Archb. Pr.* 765.

**HABERE FACIAS SEISINAM.** L. Lat. (You cause to have seisin.) In practice. A writ of execution for giving seisin of a freehold, as distinguished from a chattel interest. 3 *Bl. Com.* 412. *Cowell*.

**HABERE FACIAS VISUM.** L. Lat. (You cause to have view.) In old practice. A writ that lay in divers cases, as in dower, formedon, &c., where a view was to be taken of the lands in question. *Bract.* fol. 379. See *View*.

**HABERJECTS, Hauberjects.** [L. Lat. *haubergetta*.] A kind of cloth mentioned in Magna Charta. Cap. 25. See *Haubergetta*.

**HABETO TIBI RES TUAS.** Lat. Have, or take your effects to yourself. One of the old Roman forms of divorcing a wife. *Calv. Lex.* See *Tuas res*, &c.

**HABILIS**, (pl. *Habiles*.) Lat. Able; fit; competent; suitable. *Habiles ad matrimonium*; constitutionally fit for matrimony. 1 *Bl. Com.* 436. *Habilis* and *inhabilis*. *Shelf. Marr. & Div.* 55. *Admitto te habilem*; I admit thee able. *Co. Litt.* 344 a.

Good; sound; merchantable. Applied to merchandize warranted. *Yearb.* M. 9 Hen. VI. 37.

**HABITANT** (pl. *Habitans*.) Fr. In French and Canadian law. A resident tenant; a settler; a tenant who kept hearth and home on the seigniorry. *Dunkin's Address*, 17.

**HABITARE.** Lat. To inhabit; to dwell or reside. In the civil law, *habitare*

properly signified to dwell permanently, as distinguished from *commorari*, (to stop for a while.) But it had the latter sense also. *Calv. Lex. Prateus. Spiegelius*, cited *ibid.*

**HABIT AND REPUTE.** In Scotch law. Held and reputed. Terms used to express whatever is generally understood and believed to have happened. *Bell's Dict.*

**HABITATIO.** Lat. [from *habitare*, q. v.] A habitation, or dwelling. *Towns. Pl.* 116. 2 *Inst.* 702.

In the civil law. The right of dwelling; the right of free residence in another's house. *Inst.* 2. 5. *Dig.* 7. 8. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 5.

"HABITATION," held to mean a dwelling-house or home. 10 *Grattan's R.* 64.

**HABITUS.** Lat. In old English law. Habit; apparel; dress or garb. *Habitus religionis*; the habit of religion. *Fleta*, lib. 5, c. 5, § 32. *Habitus et tonsura clericalis*; the clerical habit and tonsure. 4 *Bl. Com.* 367. 2 *Hale's P. C.* 372.

**HABLE.** L. Fr. In old English law. A port or harbor; a station for ships. *Stat.* 27. *Hen.* VI. c. 3.

**HABLE.** L. Fr. Able; competent. *Dyer*, 70 b, (Fr. ed.)

**HABUNDA.** L. Lat. In old records. Abundance; plenty. *Paroch. Ant.* 548. *Cowell.*

**HACCIE.** [Sax. *hæca*, a hatch or bolt.] A hatch; a gate or door. *Cowell.*

**HACHIA.** L. Lat. In old records. A hack; a pick, or instrument for digging. *Placita*, 2 *Edw.* III. *MS.* *Cowell.*

**HACIENDA.** Spán. In Spanish law. Real estate. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

**HADBOTE.** In Saxon law. A recompense or satisfaction for the violation of holy orders, or violence offered to persons in holy orders. *Cowell. Blount.* Perhaps this word should be written *haelbote*, or *halibote*, from the Sax. *halg*, holy.

**HADE.** [L. Lat. *hada*.] In old records. A piece of land; a head of land, or headland. *Cowell.* See *Butts, Caput terræ, Caputia, Headlands.*

**HADERUNGA.** L. Lat. and Sax. Hatred; ill-will; prejudice, or partiality. *LL. Ethelred. Spelman. Cowell.*

**HÆC.** Lat. This; these. *Hæc sunt instituta quæ Edgarus rex consilio sapientum suorum instituit*; these are the establishments which King Edgar, with the ad-

vice of his wise men, established. 1 *Bl. Com.* 148. *Hæc sunt judicia quæ sapientes consilio regis Ethelstani instituerunt*; these are the judgments which the wise men, with the advice of King Athelstan, established. *Id. ibid.*

**HÆC EST CONVENTIO.** L. Lat. This is an agreement. Words with which agreements anciently commenced. *Yearb. H.* 6 *Edw.* II. 191.

**HÆC EST FINALIS CONCORDIA.** L. Lat. (This is the final agreement.) The words with which the foot of a fine commenced. 2 *Bl. Com.* 351.

**HÆREDA.** In Gothic law. A tribunal answering to the English court leet, and of which it was said, *de omnibus quidem cognoscit, non tamen de omnibus judicat*; it takes cognizance of all matters, but does not finally determine all. *Stiernh. de Jur. Goth.* l. 1, c. 2. 4 *Bl. Com.* 274.

**HÆREDES, Heredes.** Lat. (pl. of *Hæres*, q. v.) Heirs. *Bract.* fol. 17, 20 b.

**HÆREDES NECESSARI.** Lat. In the civil law. Necessary heirs; a term applied to the slaves of a testator. A slave made heir by his master was called *necessarius hæres*, because, whether he would or not, (*sive velit sive nolit*,) he became, immediately after the death of the testator, absolutely free and a necessary heir. *Inst.* 2. 19. 1. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 19, § 587.

**HÆREDES SUI ET NECESSARI.** Lat. In the civil law. One's own (or proper) and necessary heirs. A term applied to the sons, daughters, grandsons or grand-daughters by a son or other direct descendants of a party deceased. *Inst.* 2. 19. 2. Called *sui*, because they were domestic, and even during the life of the father were considered, in a certain sense, owners of the estate, (*quodammodo domini existimantur*.) *Id. ibid.* And called *necessarii*, because they became heirs by the operation of law, (The Twelve Tables,) whether they would or not, as well in case of intestacy as where there was a will. *Id. ibid.* *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 19, § 588. See *Sui hæredes*.

**HÆREDES EXTRANEI.** Lat. In the civil law. Extraneous, strange or foreign heirs; those who were not subject to the power of the testator. *Inst.* 2. 19. 3.

**HÆREDIPETA.** Lat. In old English law. The next heir to lands. *LL. Hen.* I. c. 70. Properly, one who endeavored to get the good will of others, in order to

be made their heir; (*qui petit hæreditatem*;) an inheritance seeker. *Co. Litt.* 88 b.

**HÆREDITAMENTUM.** L. Lat. In old English law. A hereditament, (q. v.) *Spelman*.

**HÆREDITAS, Hereditas.** Lat. [from *hæres*, an heir; L. Fr. *enheritance*.] In civil and old English law. An inheritance; an estate by succession; an estate transmissible by descent. *Hereditas alia corporalis, alia incorporalis*; one kind of inheritance is corporeal, another incorporeal. *Co. Litt.* 9. *Divisio hæreditatis*; the division of an inheritance. *Inst.* 3. 1. 6. *Hereditas* occurs in the civil law.

Inheritance; hereditary succession. *Hereditas nihil aliud est quam successio in universum jus quod defunctus habuit, [habuerit,]* inheritance is nothing else than succession to the whole right which the deceased had. *Dig.* 50. 16. 24. *Id.* 50. 17. 62. Bracton has adopted and amplified this definition of the civil law, in the following terms: *Hæreditas est successio in universum jus quod defunctus antecessor habuit, ex quacunque causâ acquisitionis, vel successionis, cum seysinâ sive sine, &c.*; inheritance is the succession to the whole right which the deceased ancestor had, by whatever title of acquisition, or succession, with seisin or without, &c. *Bract.* fol. 62 b. *In feodo et hæreditate*; in fee and inheritance. *Bract.* fol. 207. *Hæreditas ab intestato*; succession from an intestate. *Inst.* 2. 9. 7.

Bracton contends that the word *hæreditas* is not derived from *hæres*; but that *hæres*, on the contrary, is from *hæreditas*. *Hæres dicitur ab hæreditate, et non hæreditas ab hærede.* *Bract.* fol. 62 b, 265.

**Hæreditas nunquam ascendit.** Lat. An inheritance never ascends. *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 211. A maxim of feudal origin, and which invariably prevailed in the law of England down to the passage of the statute 3 & 4 *Will.* IV. c. 106, § 6, by which it was abrogated. 1 *Steph. Com.* 378. *Broom's Max.* [400.] See *Descent*.

**HÆREDITAS DAMNOSA.** See *Damnosa hæreditas*.

**HÆREDITAS JACENS.** Lat. In civil and common law. A fallen or prostrate inheritance; the inheritance of a person deceased, while it lay unacquired by the heirs; an inheritance before it was entered upon by the heir, (*antequam adita fuerit ab hærede.*) *Bract.* fol. 160. *Id.* fol. 227.

An inheritance in abeyance or expectation; *lying waiting*, as it were, for the heir to take it up; (*donec relevetur in manum hæredis.*) *Co. Litt.* 342 b. *Bract.* fol. 84. *Fleta*, lib. 3, c. 17, § 1.

An inheritance or estate left without a legal owner. 2 *Bl. Com.* 259. The estate of a person deceased, where the owner left no heirs or legatee to take it, called also *caduca*; an escheated estate. *Cod.* 10. 10. 1. 4 *Kent's Com.* 425.

**HÆREDITAS LUCTUOSA.** Lat. In the civil law. A sad or mournful inheritance, or succession; as that of a parent to the estate of a child, which was regarded as disturbing the natural order of mortality, (*turbato ordine mortalitatis.*) *Cod.* 6. 25. 9. 4 *Kent's Com.* 397.

**HÆRERE.** Lat. To adhere; to be close or immediately next to. See *Hæres*.

To stop; to go no farther. *Qui hæret in litera hæret in cortice.* He who stops in the letter, stops in the bark, rind or exterior. *Co. Litt.* 283 b. He who goes no farther than the letter, stops in the mere exterior covering of the law, without reaching its substance. "*Hæret in litera*; the objection is hypercritical." Grier, J. 12 *Howard's R.* 268.

To hesitate; to stick; to be in doubt. "*In hoc dubio*, Bromcley, C. J. *hærebat.*" *Dyer*, 77.

**HÆRES, Heres.** Lat. [from *hærere*, to adhere, to be close or next to.] In the common law. An heir; he to whom lands, tenements or hereditaments, by the act of God and right of blood do descend, of some estate of inheritance. *Co. Litt.* 7 b. See *Heir*.

*Hæredem Deus facit, non homo.* God makes the heir, not man. *Co. Litt.* 7 b. *Solus Deus hæredem facit.* God alone makes the heir. *Bract.* fol. 62 b. See *Fleta*, lib. 6, c. 1, § 4.

**Hæres est nomen collectivum.** Heir is a collective name or noun. 1 *Ventr.* 215.

**Hæres est nomen juris; filius est nomen naturæ.** Heir is a name or term of law; son is a name of nature. *Bacon's Max.* 52, in *reg.* 11.

*Hæres hæredis mei est meus hæres.* The heir of my heir is my heir. *Wharton's Lex.*

**Hæres est aut jure proprietatis aut jure representationis.** An heir is either by right of property, or right of representation. 3 *Co.* 40 b.

According to Lord Coke, the words

*hæreditas* and *hæres* are both derived from *hærendo*, (adhering,) that is, from closely resting upon; for he who is heir *hæret*, (adheres, that is, to the ancestor;) or he is so called from *hærendo*, because the inheritance *hæret*, adheres to him. (*Hæreditas et hæres dicuntur ab hærendo, quod est arcte insidendo, nam qui hæres est, hæret; vel dicitur ab hærendo, quia hæreditas sibi hæret.*) *Co. Litt.* 7 b. This idea of the close connection between heir and ancestor is carried still farther in the following maxims:

**Hæres est alter ipse, et filius est pars patris.** An heir is another self, and a son is part of the father. 3 *Co.* 12 b, *Harbert's* case.

**Hæres est eadem persona cum antecessore.** An heir is the same person with his ancestor. *Co. Litt.* 22. *Branch's Princ.* See *Nov.* 48, c. 1, § 1.

**Hæres est pars antecessoris.** An heir is a part of the ancestor. *Id. ibid.* So said, because the ancestor, during his life, bears in his body (in judgment of law) all his heirs. *Id. ibid.*

**HÆRES.** Lat. In feudal law. An heir. *Nomen hæredis, in prima investitura expressum, tantum ad descendentes ex corpore primi vasalli extenditur; et non ad collaterales, nisi ex corpore primi vasalli sive stipitis descendant; the name of heir, expressed in the first investiture, extends only to the descendants of the body of the first feudatory; and not to collaterals, unless they descend from the body of the first feudatory, or stock (of descent.)* *Craig, Jus. Feud.* lib. 1, tit. 9, § 36. 2 *Bl. Com.* 221. Hence an heir is said properly to mean a son. *Calv. Lex. Id. de Verb. Feudal.*

**HÆRES,** (more commonly **HERES**.) Lat. In the civil law. An heir; one who succeeds to the whole right or estate of the testator; (*successor in universum jus quod defunctus habuit.*) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 14. *Calv. Lex. Dig.* 50. 16. 24. *Id.* 50. 17. 62. *Id.* 50. 17. 128. 1. *Hæredis appellatio non solum ad proximum heredem, sed et ad ultiores refertur; nam et hæredis heres, et deinceps, hæredis appellatione continetur; the appellation of heir belongs not only to the next heir, but to more remote persons also; for the heir of an heir, and so on in succession, is included in the term heir.* *Dig.* 50. 16. 65. See *Id.* 50. 16. 170.

\* \* The term *hæres* or *heres* in the civil

law, scarcely corresponds with the "*heir*" of the common law, or rather it is used in senses which do not at all belong to the latter word. Thus, in the civil law, a person was said to be appointed, instituted (*institutus*) or made (*factus*) an *hæres* by another. *Inst.* 2. 14. But the maxim of the common law has always been that no man can make an heir. *Hæredem Deus facit, non homo.* The term *hæres* had, in some of its applications, nearly or quite the sense of the modern "*devisee*," and in others that of "*executor*," or "*trustee*." Thus, it was an essential formality in making a testament, that some person should be appointed heir, (*hæres*), to whose faith it should be committed that he should convey the inheritance to another person; (*ut aliquis hæres instituat, ejusque fidei committatur ut eam hæreditatem alio restituat.*) *Inst.* 2. 23. 2.

**HÆRES ASTRARIUS.** L. Lat. In old English law. An heir in actual possession. See *Astrarius*.

**HÆRES DE FACTO.** L. Lat. In old English law. Heir from fact; that is, from the deed or act of his ancestor, without, or against right. Applied to an heir whose title originated in the wrongful act, such as the disseisin of his ancestor. *Bract.* fol. 172. An heir in fact, as distinguished from an heir *de jure*, or by law. See *De facto*.

**HÆRES EX ASSE.** Lat. In the civil law. An heir to the whole estate; a sole heir. *Inst.* 2. 23. 9. See *As*.

**HÆRES EXTRANEUS.** Lat. In the civil law. A strange or foreign heir; one who was not subject to the power of the testator, or person who made him heir. *Inst.* 2. 19. 3. *Qui testatoris juri subjecti non sunt, extranei hæredes appellantur.* *Id. ibid.*

**HÆRES FACTUS.** Lat. In the civil law. An heir made by will; a testamentary heir; the person created universal successor by will. *Story's Conflict of Laws*, § 507. 3 *Bl. Com.* 224. Otherwise called *hæres ex testamento*, and *hæres institutus*. *Inst.* 2. 9. 7. *Id.* 2. 14. *Hæredes facti.* 3 *P. Wms.* 22.

Applied by Blackstone to an heir to the crown, where the inheritance is under a particular settlement. 1 *Bl. Com.* 196.

**HÆRES FIDUCIARIUS.** Lat. In the civil law. A fiduciary heir, or heir in trust; a person constituted heir to an estate by will, in trust for the benefit of an-

other who was called *fidei commissarius*, (q. v.) *Inst.* 2. 23. 1, 2. Corresponding nearly to the trustee of the English law. *Crabb's Hist. Eng. Law*, 391.

**HÆRES FIDEICOMMISSARIUS.** Lat. In the civil law. The person for whose benefit an estate was given to another (termed *hæres fiduciarius*, q. v.) by will. *Inst.* 2. 23. 6, 7, 9. Answering nearly to the *cestui que trust* of the English law. *Cooper's Just. Inst. Notes, ibid. Crabb's Hist.* 391, note.

**HÆRES LEGITIMUS.** Lat. A lawful heir. *Cod.* 6. 58. *Hæres legitimus est quem nuptiæ demonstrant.* He is a lawful heir whom marriage points out as such; who is born in wedlock. *Co. Litt.* 7 b. *Bract.* fol. 88. *Fleta*, lib. 6, c. 1. *Broom's Max.* [388.]

**HÆRES NATUS.** Lat. In the civil law. An heir born; one born heir, as distinguished from one made heir, *hæres factus*, (q. v.) an heir at law, or by intestacy, (*ab intestato*;) the next of kin by blood, in cases of intestacy. *Story's Conflict of Laws*, § 507. 3 *Bl. Com.* 224.

**HÆRES NECESSARIUS.** Lat. In the civil law. A necessary heir; a slave made an heir was so called, because, on the death of the testator, whether he would or not, he became instantly free and a necessary heir. *Inst.* 2. 19. 1. See *Hæredes necessarij*.

This term is applied by Sir William Scott to the mate of a vessel. "The mate is *hæres necessarius* to the employment of master, in case of necessity." The Favorite, 2 *Rob. Adm. R.* 237. That is, the duties of master devolve by necessity upon him.

**HÆRES RECTUS.** L. Lat. In old English law. A right heir. *Fleta*, lib. 6, c. 1, § 11.

**HÆRES SUUS.** Lat. In the civil law. A proper heir; literally, one's own heir. A term applied to the children and grand-children of a deceased person. *Inst.* 3. 1. 4, 5. See *Hæredes sui*.

**HÆRET.** See *Hære*.

**HÆRETARE.** L. Lat. In old English law. To give a right of inheritance, or make the donation hereditary to the grantee and his heirs. *Cowell. Histor. Eliensis*, c. 41, cited *ibid.*

**HÆSITARE.** L. Lat. In old practice. To hesitate. A term used in the reports. "Anderson *hæsitavit* in the words of the limitation." 1 *Leon.* 74. "Powell,

J. recanted *instante*, and Gould, J. *hæsitabat.*" 6 *Mod.* 287.

**HAFNE COURTS.** [*hafne*, Dan. a haven, or port.] In old English law. Haven courts, (*curiæ portus*;) courts anciently held in certain ports in England. *Lit. Pat. Ric. Duc. Gloc. Admir. Angl.* 5 *Edw.* IV. *Spelman.*

**HAGA.** L. Lat. [from Sax. *hægh* and *hagh*, an enclosure or hedge.] In old English law. A house. *Radulfus tenet unam hagam de xii denar'*; *Willielmus v hagas de v sol*; *Nigellus v hagas quæ faciunt servitium*; Ralph holds one house of twelve pence; William five houses of five shillings; Nigel five houses which do service. *Domesd. titt. Sussex, Terra Rogerii*, nu. 11. *Spelman.* Defined by an anonymous author to be a house with shops, (*domus cum shopis*.) *Spelman.* A house in a city or borough. *Co. Litt.* 5 b, 55 b. *Cowell. Cum novem præfatæ civitatis habitaculis quæ patria lingua hagan appellari solent*; with nine small dwellings of the said city, which in the native language are called *hagan*. *Chart. Ethelred. Regis, in auct. Mat. Par.* fol. 240. *Blount.*

A hedge. *Fossato et haga*; with a ditch and hedge. 2 *Mon. Angl.* 273.

A military enclosure; (*sepimentum militare*.) *Spelman.*

**HAIA, Haya.** L. Lat. [from Fr. *haie*, *haye*.] In old English law. A hedge, or enclosure. *Inclusum fossato, haya vel palatio*; inclosed with a ditch, hedge or paling. *Bract.* fol. 97 b. *Parvo fossato et bassa haia includere*; to enclose with a small ditch and low hedge. *Reg. Orig.* 257 b. 8 *Co.* 138 a. See *Haya*.

A park, or enclosed ground. *Spelman.* See *Hay*.

**HAIE, Haye.** L. Fr. A hedge. *Kelham.*

**HAIEBOTE.** Fr. and Sax. [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance.] In old English law. A permission or liberty to take thorns, &c., to make or repair hedges. *Blount.* See *Haybote*.

**HAILL.** Sc. In Scotch law. Whole; the whole. "All and hail" are common words in conveyances. 1 *Bell's App. Cas.* 499.

**HAIMSUCKEN.** Sc. In Scotch law. The crime of beating or assaulting a person in his own house. *Bell's Dict.* See *Hamesecken*. Skene calls this "ane Dutch word," and derives it from *haim*, home, and *sucken*, to seek.

**HAIMHALD.** Sc. In Scotch law. That which grows at home. *Skene de Verb. Sign.* voc. *Haimhaldare*.

**HAIMHALDARE.** L. Lat. In old Scotch law. To seek restitution of one's own goods and gear, and bring the same home again. *Skene de Verb. Sign.*

**HAISTERAHANDI.** In old European law. An armed hand; a hand armed against the law. *L. Alam.* tit. 10. *Spelman.*

**HALBER.** L. Fr. A coat of mail. *LL. Gul. Cong.* ll. 22, 23.

**HALF BLOOD.** [L. Fr. *demý-sangue*, *demý-sanke*.] In the law of descent. The blood of one parent only; blood on the father's or mother's side only.\* A term applied to collateral relations, when descended from a single person, who is the only ancestor common to them both. Thus, brothers and sisters are of the half blood when they are born of the same father, but different mothers, and *vice versa*. 1 *Bl. Com.* 194. 2 *Id.* 227. 1 *Steph. Com.* 386. 2 *Ken's Com.* 423—428. 4 *Id.* 403, 406, notes. Persons so related are called in the civil law *unilaterales, ex uno latere juncti*, (related on one side,) *ex uno parente conjuncti*, (related by one parent only.) *Nov.* 118, cc. 2, 3. *Dig.* 38. 10. 10, 13. 1 *Mackeld. Civ. Law*, 140, § 132.

**HALF DEFENCE.** In pleading. The technical name of the common clause at the commencement of a defendant's plea,—"And the said defendant, by —, his attorney, comes and defends the wrong, (or force,) and injury, when, &c." Called *half defence* from its abbreviated form. See *Defence*, *Full defence*.

**HALFKINEG, Healfkoning.** Sax. In Saxon law. Half-king, (*semi-rer*.) A title given to the alderman of all England. *Crabb's Hist.* 28. *Spelman.*

**HALF PROOF.** [Lat. *semi-plena probatio*.] In the civil law. Proof by one witness, or a private instrument. *Hallifax, Anal.* b. 3, ch. 9, num. 25. 3 *Bl. Com.* 370.

**HALF SEAL.** In English law. A seal used in chancery, for the sealing of commissions to delegates appointed upon any appeal in ecclesiastical or marine causes. *Stat.* 8 *Eliz.* c. 5. *Cowell.*

**HALF TONGUE.** [L. Lat. *medietas linguæ*.] A term anciently applied to a jury, one-half of which consisted of denizens or natives, and the other half of aliens. See *De medietate linguæ*, *Medietas linguæ*.

**HALF YEAR.** [L. Lat. *tempus semestris*.] In legal computation. The period of one hundred and eighty-two days; the odd hours being rejected. *Co. Litt.* 135 b. *Cro. Jac.* 166. *Yelv.* 100. 1 *Steph. Com.* 265. 2 *Crabb's Real Prop.* 423, § 1577. 1 *N. Y. Rev. St.* [606,] 615, § 3.

**HALIGEMOT, Halimote, Halmot.** Sax. [from *heal*, a hall, and *gemot*, or *mot*, a meeting.] In Saxon law. The meeting of a hall, (*conventus aulae*,) that is, a lord's court; a court of a manor, or court baron. *LL. Hen.* I. c. 10. *Spelman.* So called from the *hall*, where the tenants or free-men met, and justice was administered. *Crabb's Hist. Eng. Law*, 26.

**HALIMOT, Halimote, Halmot, Halmote.** Sax. [See *Haligemot*.] In old English law. A meeting of citizens in their public hall; otherwise called *folcmot*. *Spelman. Cowell. Blount.* In London, every company had a hall wherein they kept their courts. 4 *Inst.* 249. See *Haligemot, Halymot*.

**HALL.** [Sax. *heal*; L. Lat. *aula, halla*.] In old English law. A chief mansion-house or habitation. See *Halla*. The place where a lord's court was held. See *Haligemot*. A king's palace, where his court was held. See *Aula*.

**HALLA.** L. Lat. In old English law. A hall or mansion house. In *Newcercet hundred, ipse Hugo tenet unam terram quam Azor Rot tenuit de R. E. sine halla*; in Newkirk hundred, the said Hugh holds one piece of land which Azor Rot held of King Edward, without a *hall*, or house. *Domesd. titt. Chent, Terra Hug. de Mountfort. Blount.*

**HALLAGE.** In old English law. A fee or toll due for goods or merchandise vended in a hall. *Jacob.*

A toll due to the lord of a fair or market, for such commodities as were vended in the common hall of the place. *Cowell. Blount.*

**HALLAZGO.** Span. In Spanish law. Finding, (*trover*.) *Schmidt's Civ. Law*, 91.

**HALMETUS.** L. Lat. A halmote, or halimot, (q. v.) *Cowell.* Properly *halimotus. Spelman, voc. Haligemot.*

**HALMOTE, Halmot, Hallmote.** See *Haligemot, Halimot*.

**HALSFANG.** See *Healsfang*.

**HALT.** L. Fr. High. *Kelham.* See *Hault*.

**HALYMOTE**, *Halimot*, *Haligemot*. Sax. [from *halg*, holy, and *mot*, or *gemot*, a meeting.] In old English law. A holy or ecclesiastical court; otherwise called *circgemot*, and *chirgemot*, (qq. v.) *Spelman*. 4 *Inst.* 321.

**HALYWERCFOLK**. Sax. In old English law. People who held land for the service of repairing or defending a church or sepulchre; for which pious labors they were excused from feudal and military services. Particularly applied to tenants in the province of Durham. *Hist. Dunelm. apud Wharton. Cowell. Ranulphus, Dei gratia Dunelmensis Episcopus, omnibus hominibus suis, Francis et Anglis, de Haliwercfolk, salutem*; Ranulph, by the grace of God, bishop of Durham, to all his men, French and English, of *haliwercfolk*, greeting. 1 *Mon. Angl.* 512 b. *Blount*.

**HAM**. Sax. In Saxon and old English law. A house or dwelling; a home. *Æt ham*; at home. *LL. Inæ*, c. 5. *Spelman* supposes the radical meaning to be an enclosure or circuit, something that goes around. Hence the *hem* of a garment.

A collection of houses; a village or town. Hence the names of many places in England ending with *ham*, as Nottingham, Buckingham, &c. *Spelman*.

A piece of land; a home close, or little meadow; a narrow skirt, hem, or edge of meadow. See *Hama*, *Hamma*.

**HAMA**. L. Lat. In old English law. A hook; an engine with which a house on fire is pulled down. *Yelv.* 60.

A piece of land. See *Hamma*.

**HAMALLARE**. L. Lat. [from *mallum*, a court.] In old European law. To summon to court, (*ad mallum, seu in jus vocare*;) to go to law with; to sue or implead. *Marculf.* lib. 1, form. 36. *Spelman*. See *Admallare*.

**HAMALLUS**. L. Lat. [from *mallum*, a court.] In old European law. One who was summoned to court, (*in mallum vocatus*.) *L. Salic.* tit. 49. *Spelman*.

**HAMBELETTUM**. L. Lat. In old English law. A hamlet. *Bract.* fol. 37 b.

**HAMBLING**. In the forest law. The hoxing or hock-sinewing of dogs; an old mode of laming or disabling dogs. *Termes de la Ley*.

**HAMEL**, *Hamele*, *Hamelle*. L. Fr. A hamlet. *Thel. Dig.* lib. 11, c. 16. *Kelham*. Used also as an English word. *Spelman. Cowell*.

**HAMELETA**, *Hamelecta*. In old English law. A hamlet. See *Hamleta*.

**HAMELETTUS**. L. Lat. In old English law. A hamlet. *Fleta*, lib. 1, c. 18, § 4.

**HAMELLUS**. L. Lat. In old records. A hamel, or hamlet. *Cowell*.

**HAMESECKEN**, *Hamesucken*, *Haim-sucken*. In Scotch law. The violent entering into a man's house without license or against the peace, and the seeking and assaulting him there. *Skene de Verb. Signif.* 2 *Forbes' Inst.* 139. The same with *hamsocen*, *hamsoken*, or *hamsocne*, (qq. v.)

The crime of housebreaking or burglary. 4 *Bl. Com.* 223.

**HAMFARE**. Sax. [from *ham*, a house.] In Saxon law. An assault made in a house; a breach of the peace in a private house. *Gloss. in X. Scriptores. Ranulf. Cestrens.* lib. 1, c. 50. *Spelman. Blount*. The same with *hamsocne*, (q. v.)

**HAMLET**, *Hamel*, *Hampsel*. Sax. [dimin. of *ham*, a town or vill; or from *ham*, and *let*, or *lit*, a member or part; L. Lat. *hamleta*, *hameleta*.] A little village, or vill, (*villula*;) or rather a part or member of a vill, or town; a part less than half. *Spelman*. An appendage to a town. 1 *Bl. Com.* 115. Supposed by *Spelman* to have consisted of less than five freemen or frank pledges. See *Vill*, *Demivill*.

From the L. Lat. forms, *hambelettum* and *hamelecta*, this word seems to have once been written or pronounced *hamblet* and *hamlect*.

**HAMLETA**, *Hamletta*. L. Lat. A hamlet. *Spelman*.

**HAMLETTUS**, *Hamelettus*. L. Lat. In old English law. A hamlet. *Fleta*, lib. 4, c. 10, § 12.

**HAMMA**, *Hama*. L. Lat. [from Sax. *ham*, a home or house.] In old records. A home close; a small croft; a little meadow, or ham. *Quoddam pratunculum quod vocatur hamma. Kennett's Pároch. Ant.* 135.

A narrow skirt, hem, or edge of meadow or grass, in a common field. *Id.* 572. *Cowell*.

**HAMME**. L. Fr. A helmet. *LL. Gul. Cong.* ll. 22, 23.

**HAMPSEL**. A hamlet. *Spelman*, voc. *Hamel. Cowell*, voc. *Hamlet*.

An old house, or decayed cottage. *Kitchin.* fol. 103. *Cowell*.

**HAMSOCA**. L. Lat. In Saxon law.

Hamsoken, or hamsocne. The privilege or liberty of a man's own house; a breach of such privilege by a violent entry. *LL. Edmund. c. 6.*

A fine for such entry; an immunity from such fine. *Spelman. See Hamsocne.*

HAMSOCNE, *Hamsokne, Hamsockne, Hamsoken, Hamsockene, Homesoken.* Sax. [from *ham*, a house, and *socne*, a liberty; L. Lat. *hamsoca, hamsocna.*] In Saxon law. The liberty, privilege, or immunity of a man's house. *Spelman, voc. Hamsoca.* The right to its exclusive enjoyment, undisturbed by the entry or act of another.\*

A breach of the immunity of a man's house by entering it against his will; the violent entry of a house, (*invasio mansionis.*) *LL. Canuti, c. 39. Spelman. Hamsokne, quæ dicitur invasio domus contra pacem domini regis; Hamsokne, which is called the forcible entry of a house against the king's peace. Bract. fol. 144 b. The offence of burglary. 4 Bl. Com. 223. See Hamesecken.*

An assault made in a house, (*insultus factus in domo;*) the same with *hamfare*, (q. v.) *Ranulf. Cestrens. lib. 1, c. 50. Spelman.*

A franchise or privilege granted to lords of manors, to hold pleas and take cognizance of the offence of entering a house against the will of the occupant, and of imposing and exacting fines therefor. *Spelman, voc. Hamsoca. Blount.*

A fine or amercement imposed for entering a house forcibly and without permission, and against the peace; an immunity or acquittance from such fine; (*quietantia misericordie intrationis in alienam domum vi et injuste.*) *Fleta, lib. 1, c. 47, § 18. Rastal, apud Spelman, voc. Hamsoca.*

HAMSOKEN, *Hamsokne.* See *Hamsocne.*

HANAP, *Hannap.* L. Fr. A cup. *Litt. sect. 344. Dyer, 1.*

A hamper. *Kelham.*

HANAPER, *Hanper, Hamper.* [L. Lat. *hanaperium.*] In old English practice. A bag or basket of larger size, (*fiscus vel sporta grandior,*) in the English chancery, in which the fees arising from the sealing of writs, charters, &c. were anciently kept. *Spelman, voc. Hanaperium. Gilbert's For. Rom. 16. The fiscus, or exchequer of the chancery. Stat. 10 Ric. II. c. 1.*

HANAPER OFFICE. An office on the common law side of the English Court of Chancery, in which the writs relating to

the business of the subject, and the returns to them, were anciently kept. *3 Bl. Com. 48, 49.* So called, according to Blackstone, because these writs were, according to the simplicity of the times, originally kept in a hamper, in *hanaperio.* *Id. ibid.* But the hamper or basket, as *Spelman* has shown, was for keeping the fees or money of the office, and not for papers. *Spelman, voc. Hanaperium. See 5 Co. 43 b, Bohun's case. See Hanaper.*

HANAPERIUM. L. Lat. In old English law. A hanaper or hamper. *Spelman. See Hanaper.*

HAND. [Lat. *manus*; Fr. *main, mayn.*] In old practice. An oath; so called from the use of the hand in making it. See *Oath, Manus.*

One who made oath, especially one who swore for another; a compurgator. *Jurabit duodecima manu;* he shall swear by twelve hands, that is, he shall establish it by the oath of twelve men. *Glanv. lib. 1, c. 9. Il covint aver oue luy xi maynz de jurer oue luy;* he must have with him eleven hands to swear with him. *Dyversite des Courts, fol. 305. 3 Bl. Com. 343, 344.*

\* \* The use of the *hand* in judicial proceedings, not only for making oath, but for the purpose of identifying parties, has been practiced in English law from the earliest period. Thus, in the ancient appeals of felony, when the parties came to make the oath required of them before engaging in the *duellum*, or combat, they took each other by the *hand*, and first the appellee or accused swore thus: "Hear this, O man whom I hold by the hand, (*Ceo oyes, vous home qui jeo teigne par la mayn, or Hoc audis, homo quem per manum teneo;*) who makest thyself to be called A. by the name of baptism, that I did not slay thy father or brother, &c. So help me God and these holy things." And then the appellor or accuser swore: "Hear this, O man whom I hold by the hand, who makest thyself to be called B. by the name of baptism, that thou art perjured, and therefore perjured, because, &c. So help me God," &c. *Bract. fol. 141 b. Britt. c. 22. Fleta, lib. 1, c. 24, § 38.* A prisoner brought to the bar of a court for arraignment, is still required to hold up his *hand*, as one of the formalities of that proceeding. See *Arraignment.*

HAND. In practice. Signature. "Some writs require a judge's hand." *10 Mod. 103.*

**HANDBOROW.** In Saxon law. A hand pledge; a name given to the nine pledges in a decennary or friborg; the tenth, or chief, being called *headborow*, (q. v.) So called, as being an inferior pledge to the chief. *Spelman*.

**HANDGRITH**, *Hangrith*. Sax. [from *hand* or *hond*, and *grith*, peace.] In Saxon and old English law. Peace or protection given by the king with his own hand. *Compact. inter Alured. & Guthrun*. sect. 1. *LL. Hen. I. c. 13. Cowell*.

**HAND HABEND**, *Hand habbend*, *Hand habbinde*. Sax. [from *hand*, and *hæbbend*, having; q. d. having in hand.] In Saxon law. A thief caught with the thing stolen in his *hand*, or possession. *LL. Hen. I. c. 59. Bract. fol. 150 b, 154 b. Fleta*, lib. 1, c. 38, 1. Answering to the *fur manifestus*, (q. v.) of the civil law. Called *hæbbendre handa*, in an old record cited by Blount. *Concil. Berghamsted*, A. D. 697. Written by Bracton, *hond habend*, (q. v.)

**HANDBALE.** In Gothic law. A sale made or confirmed by the ceremony of the parties shaking *hands*, called *venditio per mutuam manuum complexionem*. *Stiernhook, de Jur. Goth.* lib. 2, c. 5. This was anciently held necessary, among all the northern nations, to bind the bargain, and the custom is still retained in some verbal contracts. 2 *Bl. Com.* 448.

The price or earnest given immediately after the shaking of hands, or instead thereof. *Id. ibid.*

**HANG.** In old practice. To remain undetermined. "It has *hung* long enough; it is time it were made an end of." Holt, *C. J. 1 Show.* 77.

**HANGING.** [Lat. *pendente*.] Pending; during the pendency. "If the tenant alien, *hanging* the præcipe." *Co. Litt.* 266 a.

**HANGING.** [Lat. *suspensio per collum*.] In criminal law. Suspension by the neck; the mode of capital punishment used in England from time immemorial, and universally adopted in the United States. 4 *Bl. Com.* 403.

**HANGWITE**, *Hangwit*. Sax. [from *hangian*, to hang, and *wite*, a fine or penalty.] In Saxon law. A fine for hanging a thief without judgment, or legal trial, (*præter juris exigentiam*), or for his escape; an immunity or acquittance from such fine or liability. *Spelman. Cowell*. In Domesday it is written *hangwitha*.

**HANSA.** L. Lat. In old records. A hanse, or commercial confederacy. *Carta Hen. VII. apud Blount*. See *Hanse*.

**HANSE.** Goth. A society of merchants, combined together for the good usage and safe passage of merchandise from kingdom to kingdom. *Cowell*. A commercial confederacy.\* *Spelman* thinks this word was originally *hause*, (with *u* for *n*), or *ause*.

**HANSE TOWNS.** Certain commercial cities in Germany, which associated for the protection of commerce towards the close of the twelfth century; at the head of which were the cities of Lubec, Hamburg, and Bremen. The league formed between them was called the Hanseatic League, the most powerful commercial confederacy known in history. 1 *Robertson's Charles V.* 63, and *Appendix*, Note xxx. 3 *Kent's Com.* 14. The code of maritime law known as the Laws of the Hanse Towns, or *Jus Hanseaticum Maritimum*, was established by this confederacy. *Id.* 14, 15.

**HANTELOD.** Germ. [from *hant*, hand, and *lod*, or *load*, laid.] In old European law. An arrest, or attachment. *Spelman*.

**HAP.** [L. Fr. *happer*.] To catch or snatch; to get, gain or obtain; to get by chance.\* *Cowell*. "He that can first *hap* it, shall enjoy out the term." *Finch's Law*, b. 2, c. 3, p. 115. See *Happer*.

**HAPPER.** L. Fr. To chance, happen or fall out; to hap; to get or obtain; to get by chance.\* *Kelham. L. Fr. Dict.*

**HAQUE.** In old statutes. A hand gun, about three quarters of a yard long. *Stat. 33 Hen. VIII. c. 6. Stat. 2 & 3 Edw. VI.* 13.

**HARACIUM.** L. Lat. In old English law. A race of horses and mares kept for breed; a stud. *Spelman*.

**HARBOUR.** [L. Fr. *havre*.] In maritime law. A shelter or safe station for vessels; a haven or port.\* A space of water so enclosed by the land as to be safe from the perils of the ocean. 1 *Duer on Ins.* 281. Any navigable water where ships can ride in safety. *Webster. Harbour* and *port* are very commonly used as synonymous terms. 1 *Duer on Ins. ub. sup.* Hubbard, J. 9 *Metcalf's R.* 371, 377. A distinction is, however, sometimes made between them. *Id. ibid.* Strictly, *harbour* seems to denote a place for the accommodation of *vessels*; *port*, a place for the

reception and delivery of *cargoes*. See *Port, Portus*.

**TO HARBOR.** To shelter or secrete; to receive and secrete a person, especially a fugitive; to receive and secrete illegally, or in opposition to the claim of another.\* To receive clandestinely and without lawful authority, a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same. *Bouvier*. Woodbury, J. 5 *Howard's R.* 215, 227. A distinction has been taken, in some decisions, between *harbor* and *conceal*. A person may be convicted of harboring a slave, although he may not have concealed her. 24 *Alabama R.* 71.

To constitute the offence of harboring or concealing a fugitive from labor, within the meaning of the Act of Congress of 1793, it must appear that the harboring or concealing was with the intention to elude the claim of the master of the alleged fugitive. 5 *McLean's R.* 65, 73.

**HARDHEIDIS**, *Hardies*, *Hardittis*. Sc. In old Scotch law. Lions; coins formerly of the value of three half-pence. 1 *Pitc. Cr. Trials*, part 1, p. 64, note.

**HARDI**, *Hardy*. L. Fr. Daring; presumptuous. *Il sera trope hardy pleador qui pledast*; he would be a very bold pleader who should plead. *Yearb. M.* 3 Edw. III. 9.

**HARDITTIS**. Sc. In old Scotch law. Hardetts; lions. 1 *Pitc. Cr. Trials*, part 1, p. 82. See *Hardheidis*.

**HARER**, *Harier*. L. Fr. To stir up; to provoke; to importune. *Kelham*.

**HARMISCARA**, *Armiscara*. L. Lat. In old European law. A kind of fine. *Spelman*, voc. *Harniscara*. Supposed by some to be a species of corporeal punishment. *Id. ibid.* The etymology and meaning of this word are both very uncertain.

**HARNASCA**. L. Lat. In old European law. The defensive armor of a man; harness. *Spelman*.

**HARNESA**, *Harnesia*. L. Lat. In old English law. Harness; tackle. *Fleta*, lib. 2, cc. 21, 85.

**HARNISCARA**. L. Lat. In old European law. A kind of fine. The same with *harniscara*, (q. v.)

**HARO, HARROU**. Fr. In Norman and early English law. An outcry, or hue and cry after felons and malefactors. *Cowell*. It seems to have been equivalent to the English "out." Thus, where the

chamberlain of the bishop of Ely had killed one William de Holme, the sister of the deceased followed the bishop, crying out with a terrible clamor, "*harrou upon thee, Thomas de Lyld, harrou, harrou upon thee; for thou hast slain my brother William de Holme, harrou upon thee, harrou.*" *Hist. Eliens.* apud *Wharton. Angl. Sacr.* par. 1, p. 658.

**HARTH, (or HEARTH) PENNY.** [Sax. *heorth peni*.] In ancient English law. A tax or tribute of a penny, imposed upon every hearth or house; the same with Peter-pence, or Romescot. *Spelman*.

**HASP AND STAPLE.** In old Scotch law. The form of entering an heir in a subject situated within a royal borough. It consisted of the heir's taking hold of the hasp and staple of the door, (which was the symbol of possession,) with other formalities. See *Bell's Dict.*

**HASPA.** L. Lat. In old English law. The hasp of a door; by which the livery of seisin might anciently be made, where there was a house on the premises. *Fieri debet traditio per ostium, et per haspam, vel annulum*; livery should be made by the door, and by the hasp or ring, [that is, by delivering these to the party, in the name of the whole.] *Bract.* fol. 40, 398. *Per haspam vel annulum hostii exterioris*; by the hasp or ring of the outer door. *Fleta*, lib. 3, c. 15, § 5.

In old records. The hasp or clasp of a book. *Liber Statut. Eccl. Paul. Lond. MS.* fol. 29 a. *Cowell*.

**HASTA.** Lat. In the civil law. A spear; the badge of a sale by auction. *Hastæ subjicere*; to put under the spear; to put up at auction. *Calv. Lex.* In modern phrase, to put under the hammer. See *Subhastare*.

**HASTA.** Lat. In feudal law. A spear. The symbol used in making investiture of a fief. *Feud. Lib.* 2, tit. 2.

**HASTER.** L. Fr. To haste; to hasten or despatch. *Britt.* c. 99.

**HASTIF, Hastyfe.** L. Fr. Hasty; inconsiderate; immature. *Britt.* c. 99.

**HAT MONEY.** [Fr. *chapot*.] In maritime law. An allowance formerly made to the master of a vessel, for the purchase of winter clothing, which, according to Jacobsen, was mentioned in almost all charter parties. *Sea Laws*, 88. Supposed to be the same with the modern allowance of *primage*. *Bouvier*. But see *Molloy de Jur. Mar.* 305.

HAUBER. O. Fr. [from Fr. *haut*, or *hault*, high, and *ber*, a baron.] A high lord; a great baron. *Spelman*.

HAUBERGETTA. L. Lat. Habberjects or hauberjects; a kind of cloth mentioned in Magna Charta. *Una [sit] latitudo pannorum tinctorum, russatorum, et haubergettorum, sc. duæ ulnæ infra listas*; [there shall be] one breadth of dyed cloths, russets, and hauberjects, to wit, two ells within the lists. *Magna Charta*, 9 Hen. III. c. 25. The charter of King John (c. 35,) has *halbergettorum*.

HAUBERGETTUM. L. Lat. In old English law. A coat of mail or hauberk. *Fleta*, lib. 1, c. 24, § 12. It seems to have been distinguished from *lorica*. *Id. ibid.* *Spelman* writes the word *hauber-gellum*.

HAUBERT. L. Fr. A coat of mail; a haubergeon. *Co. Litt.* 108 a. *Spelman*. *Skene de Verb. Sign.* *Servitium hauberticum*; military service. *Co. Litt. ub. sup.* *Wright on Ten.* 144, and note. See *Fief d'haubert*.

HAULT, *Halt*, *Haut*. L. Fr. [from Lat. *altus*, high.] High. *Le hault strete*; the high street or highway. *Yearb. M.* 19 *Ed.* II. 842. *Thel. Dig.* lib. 10, c. 11, ¶ 8. See *Haut*.

Forcible or efficacious in law. *Ci hault barre*; so high a bar. *Stat. Mod. Lev. Fines*.

HAUR. In old English law. Hatred. *LL. Gul. Cong.* c. 16.

HAURIRE. Lat. In the civil law. To draw (water.) *Dig.* 8. 3. 3. 3. *Fleta*, lib. 4, c. 27, § 8.

HAUSTUS. Lat. [from *haurire*, to draw.] In the civil law. Drawing; the drawing of water; the right of drawing water. *Qui habet haustum, iter quoque habere videtur ad hauriendum*; he who has the right of drawing, seems also to have a right of way for the purpose of drawing. *Dig.* 8. 3. 3. 3. *Cuiusque conceditur haustus, ei conceditur iter ad fontem et accessus*; to whomsoever is granted the right of drawing water, to him also is granted a right of way and access to the spring. *Fleta*, lib. 4, c. 27, § 9.

HAUT, *Haute*. L. Fr. In old English law. High. *Haut et bas*; high and low. *Et de euz tailler haut et bas*; and to tax them high and low. *Yearb.* P. 1 *Edw.* II. 4.

HAUT CHEMIN. L. Fr. Highway. *Yearb. M.* 4 Hen. VI. 4.

HAUT ESTRET. L. Fr. High street; highway. *Yearb.* P. 11 Hen. VI. 2.

HAUT JUSTICIER. See *High Justicier*.

HAUTE JUSTICE. L. Fr. High justice. *Hault justice*. Bacon's Works, iv. 298. See *High justice*.

HAVE. Lat. A form of the salutatory expression Ave, used in the titles of some of the constitutions of the Theodosian and Justinian codes. See *Cod.* 7. 62. 9. *Id.* 9. 2. 11.

To HAVE. [Lat. *habere*.] To possess corporally. "No one, at common law, was said to *have*, or to be in possession of land, unless it were conveyed to him by the livery of seisin, which gave him the corporal investiture and bodily occupation thereof." *Blackst. L. Tr.* 113.

To HAVE AND TO HOLD. A common phrase in conveyancing, derived from the *habendum et tenendum* of the old common law. See *Habendum et tenendum*.

HAVEDELOND. [Sax. *heafodlond*?] In old records. A headland. *Paroch. Antiq.* 537. *Cowell*.

HAVEN. A place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent, that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous or violent winds; as Milford Haven, Plymouth Haven, and the like. *Hale de Jur. Mar.* pars 2, c. 2.

HAW. [Sax. *hagh*; L. Lat. *haga*, q. v.] In old English law. A house. *Placit. temp. Edw. I. & II. MS.* *Cowell*. *Blount*.

A small quantity of land lying near a house. *Cowell*. *Blount*.

HAWGH, *Howgh*. In old English law. A valley. *Co. Litt.* 5 b.

HAWKERS. Persons who carry goods about from place to place for sale. A term applied, from an early period, to those persons who went about from place to place, buying and selling merchandise which ought to be uttered in open market. *Stat.* 25 Hen. VIII. c. 6, and 33 Hen. VIII. c. 4. Supposed to be derived from the uncertain wanderings of such persons, like those who, with *hawks*, seek their game where they can find it. *Cowell*. *Blount*.

HAY. [L. Fr. *haye*; L. Lat. *haia*, *haya*.] In old English law. A hedge. *Cowell*. See *Haia*.

A piece of ground enclosed with a

hedge; an enclosure in forests and parks. *Blount*.

HAYA. L. Lat. In old English law. A hay; an enclosure, or a piece of ground enclosed. See *Hay*.

A hedge. *Fleta*, lib. 1, c. 24, § 8. See *Haia*.

HAYBOTE, *Heybote*. [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance.] Hedgebote; an allowance of wood to a tenant for repairing his hedges or fences. 2 *Bl. Com.* 35. See *Hedgebote*, *Haiebote*, *Heybote*.

HAYWARD, *Haward*, *Heyward*. [from Fr. *hay*, a hedge, and *ward* or *gard*, keeping.] In English law. An officer who keeps the common herd or cattle of a town; so called, because one part of his office is to see that they neither break nor crop the hedges of enclosed grounds. *Cowell*. *Blount*. *Kitch.* 56. See *Heyward*. A similar office is retained in the United States, but the name is generally corrupted to *howard*, as in *hog-howard*.

HAYWARE. L. Lat. In old English law. To make a hedge. *Fleta*, lib. 2, c. 48, § 3.

HAZARDOUS CONTRACT. See *Aleatory contract*.

HEAD. [Lat. *caput*, q. v.] The upper part; the beginning or source. The head of a creek means the source of the longest branch, unless general reputation had given the appellation to another. 2 *Bibb's R.* 110.

HEADBOROUGH. See *Headborow*.

HEAD OF A FAMILY need not necessarily be a husband or a father. 20 *Misouri R.* 75.

HEADBOROW, *Headborough*. [from Sax. *heafod*, head, and *borgh*, a pledge.] In Saxon law. A chief pledge, (*capitalis plegius*;) the head or principal man of a frank pledge, decennary or tithing; called also *borowhead*, *borwealder*, *borghcald*, *borsholder*, *tithingman*. *Spelman*. 1 *Bl. Com.* 114. The other nine pledges were called *handborow*, (q. v.)

In modern law. A constable. *Termes de la Ley*. *Willcock on Constables*.

HEADLAND. [L. Lat. *caputium*, *chevitia*, *caput terræ*.] A slip of unploughed land left at the head or end of a ploughed field; otherwise called a *butt*. *Litt. R.* 13. 2 *Leon.* 70, case 93. See *Butts*. "The headlands were only large enough to turn the plough upon." *Bunb.* 284, case 260.

HEADSILVER. See *Common fine*.

HEAFOD. Sax. Head.

HEALSFANG. *Halsfang*, *Healfang*. Sax. [from *hals*, neck, and *fangen*, to grasp; L. Lat. *collistrigium*, q. v.] In Saxon law. The pillory; an engine of punishment by which the neck of the offender was enclosed and secured between two boards, so that the head could not be drawn out. *Spelman*. See *Pillory*.

A fine paid as a commutation for this kind of punishment. *LL. Canuti*, MS. c. 64. *LL. Hen.* I. c. 12. *Spelman*.

HEALTH. [Lat. *salus*.] Freedom from sickness or suffering. The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons. 1 *Bl. Com.* 129, 134. As to injuries affecting health, see 3 *Id.* 122.

HEAPED MEASURE. That kind of measure in which the commodities measured are heaped above the top of the vessel containing them.\* By the Revised Statutes of New-York, it is provided that all commodities sold by heaped measure shall be duly heaped up in the form of a cone, the outside of the measure by which the same shall be measured, to be the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit. 1 *Rev. St.* [608,] 618, § 21, [16.]

HEARING. In equity practice. That stage of proceeding in a cause, which corresponds to the trial of a cause at law; the hearing of the arguments of the counsel for the parties upon the pleadings, or pleadings and proofs. 2 *Daniell's Chanc. Pract.* 1176, (Perkins' ed.) 1 *Barbour's Chanc. Pr.* 316.

HEARSAY EVIDENCE. Evidence of what others have been heard to say; testimony from the relation of third persons; second-hand, as distinguished from original evidence.\* 1 *Greenl. Evid.* § 98.

The term hearsay evidence is used with reference both to that which is written, and to that which is spoken. But, in its legal sense, it is confined to that kind of evidence which does not derive its effect solely from the credit to be attached to the witness himself, but rests also, in part, on the veracity and competency of some other person from whom the witness may have received his information. 1 *Greenl. Evid. ub. sup.* 1 *Phillipps on Ev.* 185.

HEARTH MONEY. A tax of two shillings upon every hearth in England, granted to the king by statutes 13 & 14

Car. II. c. 10. Abolished by statute 1 W. & M. st. 1, c. 10. 1 *Bl. Com.* 324, 325. See *Chimney money, Fuage*.

HEARTH SILVER. In English law. A species of modus or composition for tithes. *Anstr.* 323, 326.

HEAS. The contracted form of writing *habeas*, in the old court hand, in the court of king's bench. *Towns. Pl.* 166. 1 *Inst. Cler.* 10.

HEBBERMAN. A kind of poacher, or unlawful catcher of fish on the river Thames. So called because they commonly fished at ebbing water. *Cowell. Blount.*

HEBERTHEF. In Saxon law. The privilege of having the goods of a thief and the trial of him, within a certain liberty. *Cart. S. Edmundi, MS.* fol. 163. *Cowell.*

HEBDOMADA. Lat. [from Gr. *ἡβδομας*.] A week; a space of seven days.

*Hebdomadius*; a week's-man; the canon or prebendary in a cathedral church, who had the peculiar care of the choir, and the offices of it for his own week. *Cowell.*

HEDA. L. Lat. In old English law. A port or haven. *Domesday. Spelman.*

A hithe, wharf or landing place. *Id. Cartular. Abbatiae de Radinges, MS.* fol. 5. *Cowell.*

HEDAGIUM. L. Lat. [from *heda*, q. v.] In old records. A toll or custom paid at a hithe, or wharf for landing goods. *Cartular. Abbatiae de Radinges, MS.* fol. 7. *Cowell.*

HEDGE-BOTE. An allowance of wood for repairing hedges or fences, which a tenant or lessee has a right to take off the land let or demised to him. 2 *Bl. Com.* 35. Called *fence-bote*, in *Livingston v. Ten Broeck*, 16 *Johns. R.* 15.

HEIER. Sax. An heir. *Spelman.*

HEIMENIUM. L. Lat. A hayment, or hedge fence. *Blount.*

HEINFAR, *Heinfare, Hainfar, Hamfare*. Sax. [from *hein*, or *hine*, a servant, and *far*, or *fare*, a journey or passage.] In Saxon law. The departure, flight, escape or loss of a servant. *Spelman.*

A fine paid for killing a man. *Domesday. Spelman.*

The right of taking cognizance of such an offence. *Id. ibid.*

HEIR. [Sax. *heier*; L. Fr. *heire*; Lat. *hæres*.] One who, upon the death of another, acquires or succeeds to his estate by right of blood, and by operation of law.\* The person who takes an estate in lands or tenements by descent from another, as dis-

tinguished from an *alienee*, who takes by deed, and a *devisee*, who takes by will.\*

He upon whom the law casts his ancestor's estate immediately on the death of the ancestor.\* 2 *Bl. Com.* 201. He to whom lands, tenements or hereditaments, by the act of God and right of blood, do descend, of some estate of inheritance. *Co. Litt.* 7b.

HEIR APPARENT. An heir whose right of inheritance is indefeasible, provided he outlive the ancestor; as, in England, the eldest son or his issue, who must, by the course of the common law, be heir to the father whenever he happens to die. 2 *Bl. Com.* 208. 1 *Steph. Com.* 358.

HEIR PRESUMPTIVE. The person who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child. 2 *Bl. Com.* 208. 1 *Steph. Com.* 358.

HEIR AT LAW, or HEIR GENERAL. He who, after his ancestor's death, has a right to all his lands, tenements, and hereditaments. *Whishaw.* One to whom the law gives the inheritance, on account of his proximity of blood. 1 *Forbes' Inst.* part 3, p. 76.

HEIR SPECIAL. In English law. The issue in tail, who claims *per formam doni*, by the form of the gift.

HEIR BY CUSTOM. In English law. One whose right of inheritance depends upon a particular and local custom, such as *gavelkind* or *borough english*. *Co. Litt.* 140.

HEIR BY DEVISE. One to whom lands are devised by will; a devisee of lands. Answering to the *hæres factus*, (q. v.) of the civil law.

HEIR. In Scotch law. The person who succeeds to the heritage, or heritable rights of one deceased. 1 *Forbes' Inst.* part 3, p. 75. The word has a more extended signification than in English law, comprehending not only those who succeed to lands, but successors to personal property also. *Wharton's Lex.* See *Bell's Dict.* Heirs are distinguished into various kinds, as,

*Heir institute.* One to whom the right of succession is ascertained by disposition, or express deed of the deceased. 1 *Forbes' Inst. ub. sup.*

*Heir at law.* One to whom the law

gives the inheritance, on account of his proximity of blood. *Id.* 76. The person who succeeds to the property of a person deceased. So termed, because he succeeds according to the disposition of the law. *Bell's Dict.*

*Heir of tailzie*, in general. He on whom an estate is settled, that would not have fallen to him by legal succession. 1 *Forbes' Inst.* part 3, p. 75.

*Heir male.* An heir institute, who, though not next in blood to the deceased, is his nearest male relation that can succeed to him. *Id.* 76.

*Heir of provision.* One who succeeds as heir, by virtue of a particular provision in a deed or instrument. *Wharton's Lex.*

*Heir substitute, in a bond.* He to whom a bond is payable expressly in case of the creditor's decease, or after his death. 1 *Forbes' Inst.* part 3, p. 76.

*Heir of line.* One who succeeds lineally by right of blood; one who succeeds to the deceased in his heritage; i. e. lands and other heritable rights derived to him by succession as heir to his predecessor. *Id.* 77. An heir at law is so termed, because he succeeds according to certain lines of propinquity. *Bell's Dict.*

*Heir of conquest.* One who succeeds to the deceased in conquest, i. e. lands or other heritable rights to which the deceased neither did or could succeed as heir to his predecessor. *Id. ibid.* One who succeeds to lands acquired by purchase. *Bell's Dict.*

*Heir general.* An heir who generally represents the deceased, and succeeds to every thing not specially provided to other heirs; another name for an heir at law. Called also *heir whatsoever*, or *whomsoever*. *Id.* 76, 77. *Bell's Dict.*

**HEIR-LOOM**, *Heir-lome*. [from Sax. *heier*, heir, and *leoma*, a limb, or member; L. Lat. *hereditarium*, *principalium*.] In English law. A personal chattel which goes by special custom to the heir, along with the inheritance, and not to the executor or administrator of the last proprietor. Literally, a limb or member of the inheritance. 1 *Williams on Exec.* 606. The old authorities generally confine the application of this term to articles of household furniture, or "dead chattels moveable." *Bro. Abr.* Discent, pl. 43. *Termes de la Ley*. But Lord Coke mentions fish in a pond, deer in a park, and doves in a dove-house, as chattels which go with the inheritance. *Co. Litt.* 8 a. Spelman de-

finer an heir-loom to be "any utensil of the stronger or more ponderous kind, which is not easily separated from a house, and therefore, by the custom of some places, passes to the heir as a member of the inheritance;" (*omne utensile robustius quod ab ædibus non facile revellitur, ideoque, ex more quorundam locorum, ad hæredem transit tanquam membrum hæreditatis.*) And Blackstone observes that heir-looms are generally such things as cannot be taken away without damaging or dismembering the freehold. 2 *Bl. Com.* 427. But in modern law, they are clearly distinguished from fixtures. 1 *Williams' Exec.* 607. 2 *Kent's Com.* 343. Charters or deeds relating to the inheritance, are in the nature of heir-looms, and follow the land to which they relate. 1 *Williams' Exec.* 609.

In the United States, heir-looms, as such, are for the most part unknown. 1 *Hilliard's Real Prop.* 50.

**HEIRS.** A word used in deeds of conveyance, (either solely, or in connection with others,) where it is intended to pass a fee; as, "to—, and his heirs;" or, "to—, his heirs and assigns;" or, "to—, his heirs and assigns forever." At common law, this is a necessary word of conveyance where the estate is to be created by deed. The limitation to the heirs must be made in direct terms, or by immediate reference, and no substituted words of perpetuity, except in special cases, will be allowed to supply their place, or make an estate of inheritance in feoffments and grants. *Litt.* sect. 1. 4 *Kent's Com.* 5. 2 *Bl. Com.* 107. 1 *Steph. Com.* 223. 2 *Crabb's Real Prop.* 12, § 955. Thus, if a man purchases lands "to himself forever," or "to him and to his assigns forever," he takes but an estate for life. Though the intent of the parties be ever so clearly expressed in the deed, a fee cannot pass without the word heirs. *Holt, C. J.* 6 *Mod. R.* 109. Even the word *heir*, in the singular, according to Lord Coke, is insufficient. *Co. Litt.* 8 b. 4 *Kent's Com.* 5, note. 1 *Hilliard's Real Prop.* 605, 606. The special cases which form exceptions to this rule are enumerated by Blackstone. 2 *Bl. Com.* 107, 108. And see 4 *Kent's Com.* 6, 7. In wills, a fee will pass without the word heirs, if the intention to pass a fee can be clearly ascertained from the will, or a fee be necessary to sustain the charge or trust created by the will. *Id. ibid.* 2 *Crabb's Real Prop.* 14, § 958.

In some of the United States, (as Virginia, Kentucky, Tennessee, Mississippi, Missouri, Alabama, and New-York,) the word *heirs*, or other words of inheritance, are no longer requisite to create or convey an estate in fee, either in grants or devises of lands. In other states, (as New-Jersey and North Carolina,) the provision is confined to wills. See 4 *Kent's Com.* 7, 8, and notes. 1 *Hilliard's Real Prop.* 609. 9 *Grattan's R.* 479. 6 *Ohio St. R.* 481. *Code of Tennessee*, (ed. 1858,) § 2006.

"HEIRS," in a will, is sometimes construed to mean "children." 2 *Jarman on Wills*, 23, (16, Perkins' ed.) 2 *Story's Eq. Jur.* § 1065 b. The word "heirs," when applied, in a will, to personal property, means those who take by law or under the statute of distributions. 2 *Jones' Eq. R.* 28. 1 *Id.* 114, 221. See 6 *Richardson's Eq. R.* 26. 3 *Ohio R.* (N. S.) 369.

"HEIRS" and "HEIRS OF THE BODY," when words of limitation and when of purchase, see 4 *Kent's Com.* 215—233. 17 *Georgia R.* 81. 5 *Indiana R.* 283. 2 *Selden's R.* 419.

HEIRSHIP MOVEABLES. In Scotch law. The moveables which the law withholds from the executors or nearest of kin, and gives to the heir, that the heir may not succeed to a house and land completely dismantled. *Bell's Dict.*

HENGHAM. The reputed author of a Latin treatise in two parts, entitled *Summa Magna* and *Summa Parva*, (great and small *sum*, or summary,) which Mr. Reeves calls a collection of notes relating to proceedings in actions. It is said to have been translated into English in the time of Edward II. or Edward III., and was published by Mr. Selden with some original notes of his own. Ralph de Hengham, the author, was Chief Justice of the King's Bench in the reign of Edward I., but was, for misconduct, degraded from his office, with many other justices of the period, and heavily fined. 2 *Reeves' Hist. Eng. Law*, 281. *Crabb's Hist.* 199. *Bridgman's Leg. Bibliog.* *Spelman*, voc. *Justitia*. Raulf de Ingham is referred to as an authority, in *Yearb.* M. 3 Edw. III. 37.

HENGHEN. [Sax. *hengcen*, *hengenne*.] In old English law. A prison, a place of confinement, (*carcer*;) a house of correction, (*ergastulum*.) *Ponatur in hengen, et ibi sustineat.* LL. Hen. I. c. 65. *Thonne gebuga he hengen & thære abid.* LL. Canut.

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c. 32. He shall be put into prison, and there abide, &c. *Spelman*.

HENGWYTE. Sax. In old English law. An acquittance from a fine for hanging a thief. *Fleta*, lib. 1, c. 47, § 17. See *Hangwite*.

HENRICUS VETUS. L. Lat. Henry the old, or elder. King Henry I. is so called in ancient English chronicles and charters, to distinguish him from the subsequent kings of that name. *Spelman*.

H'ENS. A contraction of *habens*. 1 *Inst. Cler.* 10. *H'ent*; a contraction of *habent*. *Id. ibid.*

HEPTARCHY. [from Gr. *ἑπτά*, seven, and *ἀρχή*, government.] The name usually given to the *seven kingdoms* of Kent, Sussex, Essex, Wessex, East Anglia, Mercia, and Northumberland, established by the Saxons on their settlement in Britain. 4 *Bl. Com.* 410. According to some, eight kingdoms were established, to which the name of *octarchy* has been given. 1 *Spence's Chancery*, 4, c. 1.

HERALD. [L. Lat. *heraldus*, *heroldus*; L. Fr. *herhault*, *heraud*, *heroud*, *haraz*, of uncertain etymology.] An officer at arms in England, whose duties, in modern times, principally relate to the superintendence and management of public pageants and solemnities, as coronations, royal marriages, funerals, &c., and the preservation of genealogies and coat armour. See *Heralds' College*.

HERALDS' COLLEGE, (or COLLEGE OF ARMS.) An ancient royal corporation in England, instituted in the first year of the reign of Richard III. A. D. 1483; consisting of three kings of arms, six heralds and four pursuivants, together with the earl marshal of England and a secretary. The records of this college contain abundant sources of genealogical evidence. See these enumerated in *Hubback's Evidence of Succession*, 538—566.

HERBA. Lat. In old English law. A plant; a weed. *Herba exotica*; tea. *Bunb.* 254.

*Herbæ dampnosæ*; noxious weeds. *Fleta*, lib. 2, c. 81, § 1.

HERBAGE. L. Fr. and Eng. [L. Lat. *herbagium*.] The produce or vesture of land, which is fed upon by cattle, (*vestura terræ quæ dentibus animalium decerpitur*.) *Spelman*, voc. *Herbagium*.

The right or liberty of feeding cattle in another's ground, as in forests. *Id.* 1 *Chitt. Gen. Pr.* 181. *Blount*.

**HERBAGIUM.** L. Lat. In old records. Herbage; the right to herbage; the right of pasturage. *Spelman. Fleta*, lib. 4, c. 19, § 9. *Liberum herbagium*; free herbage. *Blount*, voc. *Herbage*. *Herbagium anterius*; the first crop of grass or hay, in opposition to aftermath and second cutting. *Kennett's Paroch. Antiq.* 459. *Cowell*.

**HERBERGARE, Herbigare.** L. Lat. In old English law. To harbor; to entertain. *Cowell. Herbergatus*; entertained; spent at an inn. *Blount. Ad herbigandum. Cowell.* See *Heribergare*.

*Herbergagium.* A lodging for guests. *Blount*.

**HERBERGER.** L. Fr. To lodge. *Et que tiels ne se herbergent trope sovent en un lieu*; and that such do not lodge too often in one place. *Artic. sup. Chart.* c. 13.

To entertain. *Son hoste que il avera herberge plus de deux nuytz ensemble*; his guest whom he shall have entertained more than two nights together. *Britt.* c. 12.

**HERCIA.** L. Lat. In old English law. A harrow. *Fleta*, lib. 2, cc. 77, 84.

**HERCIARE.** L. Lat. [Fr. *hercer*.] In old English law. To harrow. *Arabant et herciebant ad curiam domini*; they ploughed and harrowed at the lord's manor. 4 *Inst.* 270. See *Arabant*.

**HERCIATURA.** L. Lat. [from *hercia*, a harrow.] In old English law. Harrowing; work with a harrow. *Fleta*, lib. 2, c. 82, § 2.

**HERCISCERE, Erciscere.** L. Lat. To divide or partition. The more common form is *erciscere*, (q. v.)

**HERCISCUNDA, Erciscunda.** Lat. [particip. of *herciscere*, q. v.] In the civil law. To be divided. *Familia herciscunda*; an inheritance to be divided. *Actio familiæ herciscundæ*; an action for dividing an inheritance. *Erciscunda* is more commonly used in the civil law. *Dig.* 10. 2. *Inst.* 3. 28. 4. *Id.* 4. 6. 20. *Id.* 4. 17. 4. *Herciscunda* is used by Bracton. *Bract.* fol. 443 b. This is translated in Britton by the barbarous and unmeaning word *hertescumbe*. *Britt.* c. 71, (fol. 183 b, Wingate's ed.) The whole phrase, *actio familiæ herciscundæ*, is unintelligibly rendered in the same passage, "*accion de la mone dame de hertescumbe*," which Wingate proposes to amend by reading "*accion de la meine la Dame de Hertescombe*." (!)

In a note by Wenck to the German edition of Gibbon's *Decline and Fall of the*

*Roman Empire*, (c. 44,) it is said that this word has never existed, and that Cujacius is the author of it, who read the words *terris condi* in Servius *ad Virg. herciscundi. Erciscunda*, however, which is essentially the same word, not only occurs repeatedly in the text of the civil law, but is used by Cicero himself, and may be traced to the XII Tables. *Cic. de Orat.* i. 56.\*

**HERDEWICH, Herdewic, Hardewice.** [from Sax. *herd*, a herd, and *wice*, a place or habitation.] In old English law. A grange, or place for cattle and husbandry. *Blount.* 3 *Mon. Angl.* cited *ibid*.

A herdsman's village. *Domesday. Cowell*, voc. *Herdwice*.

**HERDWERCH, Heordwerch.** Sax. In old records. Herdsman's work, or customary labors done by shepherds, herdsman, and other inferior tenants, at the will of their lord. *Regist. Eccl. Christ. Cant.* MS. A. D. 1166. *Cowell*.

**H'ERE.** A contraction of *Habere*. 1 *Inst. Cler.* 10.

**HERE, Herge.** Sax. An army, (*exercitus*.) *Spelman*.

An assemblage of more than thirty-five persons. *LL. Inæ*, c. 13. See *Hloth*.

Weapons and habiliments of war. *Lambard, apud Spelman*, voc. *Hereotum*.

**HEREBANNUM, Heribannum, Haribannum, Arribannum.** L. Lat. [from Sax. *here*, an army, and *bannum*, an edict, proclamation, fine.] In early European law. The calling out of an army by proclamation, (*indictio exercitus*.) *Spelman*. See *Aribannum*.

A fine for not joining the army when summoned, (*mulcta non ambulantis in exercitum evocati*.) *Capitul. Caroli*, lib. 3, c. 67. *Spelman. LL. Longob.* lib. 1, tit. 14, § 13. 1 *Robertson's Charles V.* Appendix, Note viii. This was imposed upon the *liberi homines*, or freemen. *Id. ibid*.

A tribute or subsidy paid for the support of an army, (Sax. *heregeld*.) *Spelman*.

**HEREDAD YACENTE.** Span. [from Lat. *hæreditas jacens*, q. v.] In Spanish law. An inheritance not yet entered upon or appropriated. *White's New Recop.* b. 2, tit. 19, c. 2, § 8.

**HEREDITAGIUM.** L. Lat. In Sicilian and Neapolitan law. That which is held by hereditary right; the same with *hereditamentum* (*hereditament*) in English law. *Const. Sicul.* lib. 3, tit. 15. *Spelman*.

**HEREDITAMENT.** [L. Lat. *hæredi-*

*tamentum.*] That which may be inherited; every thing which passes to the heir by hereditary right, (*omne quod jure hæreditario ad hæredem transeat.*) *Spelman*, voc. *Hæreditamentum*. This is by far the largest and most comprehensive expression by which things real can be described, as it includes not only lands and tenements, but whatsoever may be inherited, be it corporeal or incorporeal, real, personal or mixed. *Co. Litt.* 6 a. *Shep. Touch.* 91. 2 *Bl. Com.* 17. Thus, an heir-loom, or implement of furniture which by custom descends to the heir, together with a house, is neither land nor tenement, but a mere moveable, yet, being inheritable, is comprised under the general word *hereditament*; and so a condition, the benefit of which may descend to a man from his ancestor, is also an hereditament. *Id. ibid.* 3 *Co.* 2 b, *Winchester's case*. *Hereditament* is a word almost as comprehensive as property. 3 *Kent's Com.* 401. And it is under this term that the subjects of real property have been usually arranged; being divided into *corporeal* and *incorporeal*. 1 *Steph. Com.* 159. 1 *Crabb's Real Prop.* 2. See *Corporeal hereditaments*, *Incorporeal hereditaments*.

HEREDITAS. See *Hæreditas*.

HEREF'. The abbreviation of *Herefordshire*, in old English pleadings and records. *Towns. Pl.* 157. 1 *Instr. Cler.* 28.

HEREFARE. Sax. [from *here*, an army, and *fare*, a going.] A going into, or with an army; a going out to war, (*profectio militaris*;) an expedition. *Spelman*.

HEREGEAT. Sax. [from *here*, an army.] In old English law. A heriot. *LL. Canuti*, par. 1, c. 69. *Spelman*. See *Heriot*.

HEREGELD. Sax. [from *here*, an army, and *geld*, a payment.] In old English law. A tribute or tax levied for the maintenance of an army. *Spelman*. See *Heregeld*.

HEREOTUM, *Heriotum*, *Hariotum*. L. Lat. In old English law. A heriot, or hereot. *Spelman*. See *Heriot*. Bracton uses *herietum*. (q. v.)

HERES. Lat. Heir; an heir. A form of *hæres*, very common in the civil law. See *Hæres*.

HERESCHIP. Sc. In old Scotch law. Theft or robbery. 1 *Pitc. Cr. Trials*, part 2, pp. 26, 89.

HERESY. [from Gr. *ἁίρεσις*, a choice.] In English law. An offence against religion, consisting not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. 4 *Bl. Com.* 44, 45. Defined by Sir Matthew Hale, *sententia rerum divinarum humano sensu excogitata, palam docta, et pertinaciter defensa*; an opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. 1 *Hale's P. C.* 384. This offence is now subject only to ecclesiastical correction, and is no longer punishable by the secular law. 4 *Steph. Com.* 233.

HERETOCH. [Sax. *heretoga*, from *here*, an army, and *toga*, to lead; L. Lat. *heretochius*.] In Saxon law. A leader or commander of an army, on land or at sea, (*ductor exercitus, sive navalis sive terrestris*;) a constable, or marshal. *Spelman*, voc. *Heretochius*.

A duke, (*dux*, a leader.) 1 *Bl. Com.* 397. Supposed to have been the title of the ancient English *earl*, in his military capacity. *Crabb's Hist. Eng. Law*, 17.

On the conquest of Gaul by the Franks, the Frank *herizog* superseded the *dux* or duke. He was a military commander, but also administered justice. *Steph. Lect.* 46.

HERETUM. L. Lat. [from Sax. *here*, an army.] In old records. A court or yard for drawing up guards, or military retinue. *Cowell*.

HEREZELD. [from Germ. *hærr*, lord, and Scot. *zeld*, a gift.] In Scotch law. A gift or present made or left by a tenant to his lord as a token of reverence. *Skene de Verb. Sign. vocc. Herezelda, Averia*. *Spelman* thinks it to be a form of *heregeld*, (q. v.) A heriot. *Id.*

HERIBANNUM. See *Herebannum*.

HERIBERGARE. L. Lat. [from Sax. *here*, an army, and *bergian*, to protect or defend.] In old European law. To pitch a camp; to receive or put an army in a safe place. *Spelman*.

To receive an individual under one's protection; to receive or entertain a traveller, (*hospitari*.) *Id.*

HERIBERGUM. L. Lat. [See *Heribergare*.] In early European law. A fortified camp; a place for the safe reception of an army. *Spelman*.

Any place of reception or entertainment; an inn, (*hospitium*.) *Id.*

HERIETTUM. L. Lat. In old English law. A heriot. *Bract. fol.* 84, 86.

*Fleta*, lib. 3, c. 18. *Dyer*, 199 b. See *Heriot*.

HERIOT, *Hariot*, *Herioth*, *Hereot*. [L. Lat. *heriotum*, *hereotum*, *hariotum*, *herietum*; Sax. *heregeat*, from *here*, an army, and *geat*, an expedition.] In Saxon law. A payment or tribute in arms, or military accoutrements, (*militaris supellectilis præstatio*;) made or due to the lord, on the death of a tenant. *Spelman*, voc. *Hereotum*. *Lambard*, *ibid*. Called also *exercitiale*, (from *exercitus*, an army.) *Cowell*, voc. *Exercitiale*. Thus, by the laws of Canute, the heriot of an earl was fixed at eight horses, four with trappings and four without; four helmets, four coats of mail, eight spears, and as many shields, four swords, and two hundred pieces of gold. *LL. Sax. Canuti*, par. 1, c. 69. These were compulsory heriots. 2 *Bl. Com.* 423.

In early English law. A gift or legacy made by a tenant to his lord, at his death, of his best or second best beast, according to custom. *Bract.* fol. 86. This, according to Bracton, was done as a mark of respect to the lord, and was a matter of favor rather than of right. *Bract. ub. sup.* See *Fleta*, lib. 3, c. 18. And yet, in another passage, Bracton observes that where a freeman died suddenly and without a will, his lord was entitled to his heriot. *Id.* fol. 60 b. Which shows that the heriot had become, at that early period, a customary tribute. 2 *Bl. Com.* 423, 424.

In modern English law. A customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of the land. 2 *Bl. Com.* 422. See 16 *Mees. & W.* 1. This, (which is otherwise called *heriot custom*;) is now confined for the most part to copyhold tenures, and is sometimes the best live beast, or *averium*, which the tenant dies possessed of, sometimes the best inanimate good, under which a jewel or piece of plate may be included, but it is always a *personal* chattel, which, immediately on the death of the tenant who was the owner of it, being ascertained by the option of the lord, becomes vested in him as his property. 2 *Bl. Com.* 423, 424. 2 *Steph. Com.* 48, 49. 1 *Crabb's Real Prop.* 632, § 809, *et seq.* This custom, Mr. Stephen observes, is now justly considered as one of the most oppressive circumstances which attend the modern law of tenures. 1 *Steph. Com.* 210.

HERIOTH. A heriot. *Bract.* fol. 60 b.

HERIREITA. L. Lat. [from Sax.

*here*, an army, and *ryt*, a band.] In old European law. A military band or company. *L. Boior.* tit. 3, c. 8, § 1. *Spelman*.

HERISCHULDA. Sc. In old Scotch law. A fine or penalty for not obeying the proclamation made for warfare. Skene derives this word from *herr*, an army, and *schuld*, a debt.

HERISLIT, *Herisliz*, *Herislitz*. [from Sax. *here*, an army, and *slit*, or *slice*, a breaking, or severing.] In old European law. A breaking off or separation from an army, (*diruptio exercitus*;) the crime of deserting from an army. *Spelman*.

HERISTAL. [from Sax. *here*, an army, and *stal*, a station; L. Lat. *heristallus*.] The station of an army; the place where a camp is pitched. *Spelman*.

HERITABLE. In Scotch law. That which may be inherited; that which goes to the heir, and not to the executor; the opposite of *moveable*.\* See *infra*.

HERITABLE BOND. In Scotch law. A bond accompanied by a conveyance of land, to be held as a security for debt. *Bell's Dict.* *Jacob*.

HERITABLE JURISDICTIONS. In Scotch law. Grants of criminal jurisdiction, formerly bestowed on great families in Scotland, to facilitate the administration of justice. *Dalrymple on Feuds*, 292. *Bell's Dict.* Abolished in effect by stat. 20 Geo. II. c. 50. *Id.* *Tomlins*.

HERITABLE RIGHTS. In Scotch law. Rights of the heir; rights to land, or whatever may be intimately connected with land; answering to the *realty* of the English law. *Bell's Dict.* *Jacob*. *Whishaw*.

HERITAGE. In Scotch law. Land, and all property connected with land; real estate, as distinguished from *moveables*, or personal estate. *Bell's Dict.*

HERITOR. In Scotch law. A proprietor of land. 1 *Kames' Equity*, pref.

HERMAPHRODITE. [Lat. *hermaphroditus*.] A person of doubtful sex, or one supposed to possess the characteristics of both sexes.

*Hermaphroditus tam masculo quam fæminæ comparatur, secundum prævalentiam sexûs incalescentis*; an hermaphrodite is to be considered male or female, according to the predominance of sex. *Bract.* fol. 5. *Fleta*, lib. 1, c. 5, § 3. *Co. Litt.* 8. This was probably taken from *Dig.* 1. 5. 10.

**HERMOGENIAN CODE.** See *Codex Hermogenianus*.

**HERNESIUM, Hernasium.** L. Lat. [from Teut. *harnas*, harness.] In old English law. The furniture of a house or table. *Girald. Camb. apud Wharton. Angl. Sac. Cowell.*

The tackle or rigging of a ship. *Plac. Parl. 22 Edw. I. Cowell. Blount.*

**HEROUD, Heraud.** L. Fr. A herald. *Spelman, voc. Heraldus.*

**HERPEX.** Lat. A harrow. *Spelman.*

**HERPICATIO.** L. Lat. [from *herper*, q. v.] In old English law. A day's work with a harrow. *Spelman.*

**HERPSAC.** Sax. A place of immunity. *Blount, voc. Frodmortel.*

**HERSCHILDT.** Sax. [from *her*, an army, and *schildt*, a shield.] In Saxon law. Military service; scutage. *Spelman.*

**HERTESCUMBE.** A word used in Britton (c. 61,) to express the Lat. *herciscundæ*, the meaning of which was obviously not understood. This goes to show that the ignorance of the civil law, to which Blackstone alludes in the introduction to his Commentaries, had begun to prevail in England as early as the time of Edward I. 1 *Bl. Com.* 22.

**HERUS.** Lat. A master. *Servus facit ut herus det*; the servant does [the work] in order that the master may give [him the wages agreed on.] 2 *Bl. Com.* 445. *Herus dat ut servus facit*; the master gives [or agrees to give, the wages,] in consideration of, or with a view to the servant's doing [the work.] *Id. ibid.*

**HEST CORN.** In old records. Corn or grain given or devoted to religious persons or purposes. 2 *Mon. Angl.* 367 b. *Cowell.*

**H'ET.** A contraction of *habet* in old records. *Towns. Pl.* 167. 1 *Inst. Cl.* 10.

**HETÆRIA.** Lat. In the Roman law. A company, society or college. *Plin. Epist. x.* 43, 94.

**HEUVELBORH.** Sax. [from *healf*, half, and *bork*, a pledge or surety.] In old English law. A surety, (*warrantus*.) *LL. Gul. Cong.* l. 25.

**HEYARE.** L. Lat. In old English law. To make a hedge. *Si heyaverit vel fossatum fecerit*; if he have made a hedge or ditch. *Bract. fol.* 159 b.

**HEYBOTE, Haybote.** [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance or consideration.] In English law. A liberty granted to a tenant, of cutting as much

underwood and bushes on the premises, as was necessary for mending and maintaining the fences or hedges. *Kennett's Paroch. Ant.* 209. *Cowell. Libertas habendi rationabile estoverium in bosco patroni, sicut ad housbote et heybote, et ad ardendum et hujusmodi*; a liberty of having a reasonable estover in the wood of the patron, as for housebote and heybote, and for burning [fire bote,] and the like. *Bract. fol.* 408.

**HEYLODE.** In old records. A customary burden upon inferior tenants, for mending or repairing hays or hedges. *Cowell.*

**HEYNOUSITE.** L. Fr. Heinousness. *Yearb. M.* 3 Edw. III. 19.

**HEYWARD.** [from Sax. *hig*, grass, or *heg*, a hedge, and *weard*, a keeper.] In English law. One who takes care of the pasturing of animals, (*rei pascuæ curator*;) a herdsman. *Spelman.* The same probably as *hayward*, (q. v.)

**HI.** L. Fr. There; thither. *Kelham.*

**HIDA, Hyda.** L. Lat. In old English law. A hide; a portion or measure of land. *Spelman.* See *Hide*.

**HIDAGE, Hydage.** [L. Lat. *hidagium*, q. v.] In old English law. An extraordinary tax payable to the king for every hide of land; otherwise called *hidegild*. *Spelman, voc. Hida.* See *Hide*. In raising taxes, it was an ancient custom to describe the kingdom by *hides*; which *Spelman* thinks was introduced by King *Ethelred*, A. D. 1008. *William the Conqueror* took from every hide in England six shillings; and *William Rufus*, four shillings. *Florent. Wigorn.* in an. 1084. *Mat. Par.* in an. 1083. *LL. Edw. Conf.* c. 11. *Spelman.* *Bracton* mentions hidages among those common payments which are not called services, nor arise from custom, unless some necessity intervenes, or when the king comes. *Bract. fol.* 37. See *Fleta*, lib. 3, c. 14, § 9.

The privilege of being quit or exempt from the tax called hidage. *Termes de la Ley.*

**HIDAGIUM.** L. Lat. [from *hida*, q. v.] *Hidage.* *Bract. fol.* 37. See *Hidage*.

**HIDALGO.** Span. [from *hijos*, son, and *algo*, property.] In Spanish law. A noble; a person entitled to the rights of nobility. *White's New Recop.* b. 1, tit. 5, c. 1. *Id.* c. 3, § 4, note. By *hidalgos*, are understood men chosen from good situations in life (*de buenos lugares*) and possessed of property, (*algo*.) *Id. ibid.*

**HIDALGUIA.** Span. In Spanish law. Nobility by descent or lineage. *White's New Recop.* b. 1, tit. 5, c. 3, § 4.

**HIDARE.** L. Lat. [from *hida*, q. v.] In old English law. To tax or assess land by hides. *Spelman*, voc. *Hida*. *Hidatus*; taxed. *Id. ibid.*

**HIDE, Hyde.** [Sax. *hyd*, from *hyden*, to cover, or hide: L. Lat. *hida*, *hyda*; Scot. *hilda*.] In old English law. A house or dwelling; a mansion or manse; answering to the Latin *tectum*, a thing covered, or roofed. *Spelman*, voc. *Hida*. Called by the writers of the middle ages, *mansum* and *mansio*. *Id.*

A portion of land sufficient for the support of one family; called by Bede *familia*; including a house or *hide*, and lands belonging to it, called *hydelandes*. *Spelman*.

A quantity of land sufficient for the working of one plough for a year, (*portio terræ ad unius aratri pensum annuum sufficiens*;) or as much as could be ploughed with one plough in a year; a ploughland. *Spelman*, voc. *Hida*. *Henric. Huntington*, *Hist.* lib. 6, fol. 206 b. *Co. Litt.* 5 a. Called also *carucata terræ*, (q. v.) *Id. ibid.* The quantity of land contained in a hide is uncertain. According to Gervase of Tilbury, who is followed by Crompton, it originally consisted of one hundred acres. *Crompt. Jur.* fol. 220, 222. *Spelman*, *ub. supra*. *Cowell*. Lord Coke observes that it does not contain any certain number of acres. *Co. Litt.* 69 a. The division of England into hides is of great antiquity, occurring as early as the time of king Ina. *Spelman*, *ub. sup.*

**HIDE (or HYDE) AND GAIN.** In English law. A term anciently applied to arable land. *Co. Litt.* 85 b. See *Gain*.

**HIDE LANDS.** [Sax. *hydelandes*.] In Saxon law. Lands belonging to a *hide*, that is, a house or mansion. *Spelman*, voc. *Hida*.

**HIDEL.** In old English law. A place of protection; a sanctuary. *Stat. 1 Hen.* VII. c. 5, 6. *Cowell*.

**HIER.** L. Fr. *Heir*. *Kelham*.

**HIGH.** [Lat. *altus*, *alta*, *altum*; L. Fr. *haut*, *halt*.] Open; common; public; as the high sea, a high way, (qq. v.)

Elevated in station, dignity or importance; as a high court. Head, or chief; (Lat. *magnus*;) as high admiral; high constable, high sheriff.

Elevated or prominent in a bad sense;

aggravated; atrocious; as a high crime, high treason.

**HIGH COMMISSION COURT.** A court of ecclesiastical jurisdiction in England, erected and united to the regal power by virtue of the statute 1 Eliz. c. 1; which, from the abuses of its powers, was abolished by statute 16 Car. 1, c. 11. 3 *Bl. Com.* 67.

**HIGH CONSTABLE.** In English law. A ministerial officer of justice, otherwise called chief constable, and constable of the hundred, whose proper duty is to keep the king's peace within the hundred, as the petty constable does within the parish or township. 3 *Steph. Com.* 46, 47. See *Constable*.

**HIGH JUSTICE.** [Fr. *haute justice*.] In feudal law. The jurisdiction or right of trying crimes of every kind, even the highest. This was a privilege claimed and exercised by the great lords or barons of the middle ages. 1 *Robertson's Charles V.* Appendix, Note xxiii. See *Justice*.

**HIGH JUSTICIER.** [Fr. *haut justicier*.] In old French and Canadian law. A feudal lord who exercised the right called high justice. *Guyot, Inst. Feod.* ch. 26. *Dunkin's Address*, 87.

**HIGH SEAS,** (more correctly, **HIGH SEA**.) [Lat. *altum mare*; L. Fr. *le hault meer*.] The open ocean outside of the *fauces terræ*, as distinguished from arms of the sea; the waters of the ocean without the boundary of any county. 1 *Kent's Com.* 367 and note. 5 *Mason's R.* 290. 1 *Story's R.* 259. See *Fauces terræ*.

Any waters on the seacoast which are without the boundaries of low-water mark. 1 *Gallison's R.* 624. 5 *Wheaton's R.* 184. The high or main sea properly begins at low-water mark. *Story, J.* 2 *Gall. R.* 398, 428. See 1 *Kent's Com.* 367, note. 5 *Howard's R.* 453, 462.

**HIGH TREASON.** [L. Lat. *alta prodition*; L. Fr. *graund treson*.] In English law. Treason against the king or sovereign, as distinguished from petit or petty treason which might formerly be committed against a subject. 4 *Bl. Com.* 74, 75. The crime of *petit* treason having been recently abolished, the correlative term *high* has lost its significance, and is accordingly omitted by Mr. Stephen in his *New Commentaries*. 4 *Steph. Com.* 183, 184, note. See *Treason*, *Petit Treason*.

**HIGH-WATER MARK.** The mark which the sea makes on the shore, at high-

water of ordinary tides. See 5 *B. & Ald.* 268. 7 *Peters' R.* 324. 6 *Mass. R.* 435. *Angell on Tide Waters*, chap. 3. The margin of the periodical flow of the tide, unaffected by extraordinary causes. Nelson, J. 13 *Howard's R.* 421. See *Id.* 423, 424. Anciently called *flood-mark*, (q. v.) and the high line of the sea, (*haut fil de mer.*) See *Fil.*

**HIGHWAY.** [L. Lat. *alta via* ; L. Fr. *haut chemin, hault strete, haut estrete.*] A public way or road; a way or passage open to all;\* a way over which the public at large have a right of passage. *Brande.* Called in some of the old books, *high street.* *Finch's Law*, b. 2, ch. 9. Every thoroughfare which is used by the public, and is, in the language of the English books, "common to all the king's subjects," is a *highway*, whether it be a carriage-way, a horse-way, a foot-way or a navigable river. 3 *Ken's Com.* 432. Lord Ellenborough, 13 *East*, 95. As to rivers, see *Angell on Water-Courses*, chap. 13. 18 *Barbour's R.* 277. The word *highway* is the genus of all public ways. Holt, C. J. 6 *Mod.* 255. A distinction is made by Blackstone between the *king's highway*, leading from town to town, and a *common way* leading from a village into the fields. 2 *Bl. Com.* 32. This distinction has been formally adopted by Mr. Crabb, who defines a highway, "a way to a market, or a great road, &c. common to all passengers, or, more properly speaking, a public passage for the Queen and all her subjects, whence called by distinction the "Queen's highway;" adding that "whether it leads to a market-town or not, it is a highway if common to all the people." 1 *Crabb's Real Prop.* 99, 100, § 102. Mr. Serjeant Stephen has not adopted the distinction above referred to, though he distinguishes between highways and turnpike roads. 3 *Steph. Com.* 257, 259, 261, 266. See *Turnpike.* A highway is an easement. 1 *Conn. R.* 103, 132. Lord Brougham, 4 *Bell's Appeal Cases*, 390. See 2 *Smith's Lead. Cas.* 94, note, and Am. ed. note. *United States Digest*, Ways. See *Alta via, Via regia.*

**HIGHWAY ACT.** In English law. The statute of 5 & 6 Will. IV. c. 50. 3 *Steph. Com.* 258.

**HIIS (or HIJS) TESTIBUS.** L. Lat. (These being witnesses.) The name of the concluding or attestation clause in ancient deeds and charters, which contained the names of the witnesses; so called from the

words with which it commenced. The whole clause ran thus: *Hijs testibus, Johanne Moore, Jacobo Smith; et aliis ad hanc rem convocatis*; these being witnesses, John Moore, James Smith, and others assembled for this purpose. 2 *Bl. Com.* 307. *Co. Litt.* 6 a, 7. The names of the witnesses were written by the clerk who drew the deed, and not by the witnesses themselves, who very often could not write. 2 *Reeves' Hist. Eng. Law*, 89. Tindal, C. J. 6 *Man. & Gr.* 457. Magna Charta concludes with a clause of this kind, and so did all royal grants and charters until the reign of Richard the second, when the clause *Teste meipso* was introduced in its place. 2 *Bl. Com.* 308. *Crabb's Hist.* 150, 151. 2 *Inst.* 78. The clause of *hijs testibus* in the deeds of subjects was not entirely discontinued until the reign of Henry VIII. 2 *Bl. Com. ub. sup.*

**IJO.** Span. In Spanish law. A child, or son. *White's New Recop.* b. 3, tit. 10, c. 1, § 4.

**IKENILD STREET.** One of the four great Roman roads of Britain. *LL. Edw. Conf.* c. 12. More commonly called *Ikenild Street*, (q. v.)

**HILARY TERM.** One of the four terms of the English courts of common law, beginning on the 11th and ending on the 31st of January in each year. *Stat. 11 Geo. IV. & 1 Will. IV. c. 70.* 3 *Steph. Com.* 561. It formerly began on the 23d January, and ended on the 12th February; and derives its name from St. Hilary's day, which immediately preceded its commencement. *Id. ibid.* 3 *Bl. Com.* 277.

**HINE, Hein.** Sax. In old English law. A servant or domestic; properly a servant at husbandry. *Cowell.*

**HINFANGTHEFE.** This word occurs in Bracton, (fol. 122 b,) but in another passage is written *infangenthes, infangethes*, which is the ordinary form. *Id.* fol. 154 b. See *Infangthesfe.*

**HIPOTÉCA, Hypoteca.** Span. [from Græco-Lat. *hypotheca*, q. v.] In Spanish law. A mortgage of real property. *White's New Recop.* b. 2, tit. 7. *Schmidt's Civ. Law*, 179.

**HIRCISCUNDA.** See *Herciscunda.*

**HIRE.** [Lat. *merces.*] In the law of bailment. Compensation for the use of a thing, or for labor and services. See *Locatio, Merces.*

**HIRER.** [Lat. *conductor.*] In the law of bailment. One who takes a thing from

another to use it, for a compensation agreed upon. See *Conductor*.

HIRST, *Hurst*. In old English law. A wood. *Co. Litt.* 4 b.

HITHE. See *Hyth*.

HLAFORD. Sax. A lord. 1 *Spence's Chancery*, 36.

HLAFORDSWICE. Sax. In Saxon law. The crime of betraying one's lord, (*proditio domini*;) treason. *Crabb's Hist. Eng. Law*, 59, 301.

HLOTH, *Hlode*. Sax. In Saxon law. An unlawful company or assembly of men, (*turma illegitima*,) numbering from seven to thirty-five. *LL. Inæ, MSS.* c. 13. *Spelman*.

HLOTHBOTE. Sax. [from *hloth*, a company, and *bote*, a fine.] In Saxon law. A fine for being present at an unlawful assembly. *LL. Alured. MSS.* c. 26. *Spelman*.

HO. Stop; cease. The word made use of for the combatants in the *duellum* to leave off fighting. *Kelham*.

HOASTMEN. In English law. An ancient guild or fraternity at New-Castle-upon-Tyne, who dealt in sea coal. *Stat.* 21. *Jac.* I. c. 3.

HOBELLARII, *Hobelarii*. L. Lat. [from *hobby*, a light or small horse, or Fr. *hobille*, a tunic or jack.] In old English law. Hobilers or hoblers. Soldiers lightly armed, and mounted on ordinary but active horses, (*milites levi armatura, et mediocri equo ad omnem motum agili*;) light horsemen or light cavalry. *Spelman. Barringt. Obs. Stat.* 237, note [2].

HOBILERS, *Hoblers*. [L. Fr. *hobelours*; L. Lat. *hobellarii*.] In old English law. Light horsemen. See *Hobellarii*.

HOC PARATUS EST VERIFICARE. See *Et hoc paratus, &c.*

HOC QUIDEM PERQUAM DURUM EST, SED ITA LEX SCRIPTA EST. Lat. (This indeed is exceedingly hard, but so the law is written; such is the written or positive law.) An observation quoted by Blackstone, as used by Ulpian in the civil law; and applied to cases where courts of equity have no power to abate the rigor of the law. *Dig.* 40. 9. 12. 1. 3 *Bl. Com.* 430. The text of the Digests reads, "quod quidem perquam," &c.

HOC VOBIS OSTENDIT. L. Lat. [L. Fr. *ceo vous monstre*.] (This shows to you.) The form in which the plaintiff's count (or *intentio*,) in some real actions commenced in the time of Bracton. *Hoc*

*ostendit vobis A. quod B. injuste ei deforciat, &c.*; this shows A. to you that B. unjustly deforces him, &c. *Bract.* fol. 372 b. *Id.* fol. 296 b. *Fleta*, lib. 5, c. 25, § 9. *Id.* lib. 6, c. 16, § 2. 1 *Reeves' Hist. Eng. Law*, 427.

HOCHPOT. See *Hotchpot*.

HODGE-PODGE ACT. A name given to an act of parliament, in which enactments on various distinct subjects are thrown together under one title. *Barringt. Obs. Stat.* 449.

HOGA, *Hogum*. L. Lat. In old English law. A hill or mountain; in old English, a *how*. *Grene hoga*; Greenhow. *Domesday. Spelman*.

HOGACIUS, *Hoggacius*. L. Lat. In old English law. A sheep of the second year. *Cartul. Abbat. Glaston. MS.* fol. 48 a. *Cowell*.

HOGASTER, *Hoggaster*. L. Lat. In old English law. A sheep of the second year. *Fleta*, lib. 2, c. 79, §§ 4, 12.

HOGHENEHYNE, *Hogenehyne, Agenhine, Homehyne*. Sax. [from *hogh*, a house, and *hine*, a servant.] A domestic servant; one of the household or family. A name given, in the old Saxon laws, to one who was entertained in another's house, on the third night of his stay; the head of the family being, in such case, answerable for his conduct as for his *own domestic* servant. On the first night, he was called *uncuth*, (unknown, or a stranger;) on the second night, *gust*, (guest;) on the third night, *hogenehyne*. *Bract.* fol. 124 b. *Britt.* c. 12. In the Saxon laws, the word is written *agen hyne*, pronounced *awn hine*. *Frum night*, *uncuth*; *twa night*, *gest*; *thrid night*, *agin hine*. *LL. Edw. Conf.* c. 17. *Spelman* defines the word under *homehine*. *Cowell* and some others make *third night* a part of the appellation, which is clearly an error. In *Latch*, 88, the old Saxon law seems to be entirely misunderstood.

HOGSHEAD. A measure of capacity, containing the fourth part of a tun, or sixty-three gallons. *Cowell*.

In America, a butt or cask, containing from 110 to 120 wine gallons. *Webster*.

HOLD. In old law. Tenure. A word constantly occurring in conjunction with others, as *freehold*, *leasehold*, *copyhold*, &c., but rarely met with in the separate form. It occurs several times in the old laws of the colony of New Plymouth. "That inheritance do descend according to the commendable custom of England

and hold of East Greenwich." *Colony Laws*, Nov. 15, 1636. "That a convenient form for registry of men's particular holds be here inserted," &c. *Id. ibid.*

To HOLD. [Lat. *tenere* ; L. Fr. *tener*.] To bind ; to be of legal force or efficacy. See *Tenere*.

To judge or deem ; to be of opinion ; to decide. "The court held," &c. See *Tenere*.

To be the grantee or tenant of another ; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service. See *Tenere, Tenendum, Tenure, Tenant*.

To have in possession ; to possess. See *Holder, Tenant*.

To HOLD PLEAS. [L. Lat. *tenere placita* ; ad *tenenda placita*.] To have cognizance or jurisdiction of actions. 3 *Bl. Com.* 35, 298.

To hold courts, or hear causes. *Reg. Orig.* 68 b.

HOLDER. [Fr. *porteur*.] In mercantile law. The person having [rightfully] in possession a bill of exchange, promissory note or check, whether as payee, indorsee or otherwise.\* *Story on Bills*, § 12. Called sometimes *bearer*. *Chitty on Bills*, 26, 27.

HOLDES. Sax. In Saxon law. A military commander. *Spelman*.

HOLDING. In Scotch law. Tenure ; the nature of the right given by the superior to the vassal. *Bell's Dict.* See *Wardholding, Blench-holding, Feu-holding*.

HOLDING UP THE HAND. In criminal practice. A formality observed in the arraignment of prisoners. See *Arraignment, Hand*. Held to be not absolutely necessary. 1 *W. Bl.* 3, 4.

HOLDING OVER. A holding beyond a term ; a continuing in possession, after the expiration of a term. The act of keeping possession of premises leased, after the expiration of the term of the lease, without the consent of the landlord.

HOLIDAY. See *Dies non juridicus*.

HOLM. [L. Lat. *hulmus*.] In English law. An island in a river (*insula amnica*.) or the sea, (*marina*.) *Spelman*, voc. *Hulmus*. *Co. Litt.* 5 a. *Blount*.

Plain grassy ground upon water sides, or in the water. *Blount*. *Camden*, cited *ibid.* Low ground intersected with streams. *Spelman*.

HOLOGRAPH. [Græco-Lat. *holographum* ; Gr. *ολογραφον*, from *ολος*, all, and *γραφειν*, to write.] In civil and Scotch law.

Any writing, deed, document or memorandum wholly in the handwriting of a party. *Bell's Contr. of Sale*, 64. *Bell's Dict.* *Best on Evid.* 256, § 210.

A will written entirely by the hand of the testator. *Calv. Lex.* 1 *Jarman on Wills*, 135, (Perkins' ed.) 3 *Jones' Law R.* 516. Called, in French, *olograph*, (*le testament olograph*.) *Civ. Code of Louis. Art.* 1581. See *Olograph*.

HOLT. Sax. In old English law. A wood or grove. *Spelman*. *Cowell. Co. Litt.* 4 b.

HOLY ORDERS. [Lat. *sacri ordines*.] In ecclesiastical law. The orders of bishops, (including archbishops,) priests and deacons, in the church of England. 3 *Steph. Com.* 55. 1 *Wooddes. Lect.* 174. The Roman canonists had the orders of bishop, (in which the pope and archbishops were included,) priest, deacon, sub-deacon, psalmist, acolythe, exorcist, reader, ostiarius. *Corv. Jus. Canon.* 38, 39. *Gibs. Cod.* 115. 1 *Wooddes. Lect.* 174, note.

HOMAGE. Fr. and Eng. [L. Lat. *homagium* and *hominium* ; from *homo*, (Fr. *home*,) a man, or vassal.] In feudal law. An acknowledgment by a feudal tenant, that he was the *man* or vassal of his lord.\* A ceremony or service which every tenant was bound to perform to his lord, on receiving investiture of a fee, or coming to it by succession as heir, in acknowledgment of the tenure. *Glanv. lib.* 9, c. 1. *Bract. fol.* 77 b. 78, 79, 80. It was properly incident to the tenure by knight-service, and is called by Littleton the most honorable service, and the most humble service of reverence that a free tenant could do to his lord. *Litt. sect.* 85. It was performed by the tenant kneeling, bare-headed and ungirt, holding both his hands together between those of his lord, who sat before him, and repeating the following form of words: "I become your *man*, from this day forth, of life, of limb, and of worldly honor [or earthly worship] ; and unto you shall be true and faithful, and will bear you faith for the lands which I hold of you, saving the faith I owe to our sovereign lord the king." *Stat.* 17 *Edw.* II. st. 2. The lord then gave the tenant a kiss, and the latter standing up then made the oath of fealty. *Litt. sect.* 85. *Bract. fol.* 80. *Spelman*. 2 *Bl. Com.* 54. See *Homagium, Homo*.

\* \* The above mentioned formula of homage was prescribed by the statute 17

Edw. II. The older form given by Bracton is in somewhat different language, though both commenced with the same words: *Devenio vester homo*; (L. Fr. *jeo deveigne vostre home*.) from which the term *homage* itself is derived. *Bract.* fol. 80. *Britt.* c. 68. See *Fleta*, lib. 3, c. 16, § 20. *Co. Litt.* 64 b. See *Devenio*. That homage was much more than a mere ceremony, is clear from Bracton's definition of it, (see *Homagium*.) who also observes that the putting of the tenant's hands between those of the lord denoted, on the part of the lord, protection, defence, and warranty, and on the part of the tenant, reverence and subjection. *Bract.* fol. 80. Homage is now commonly regarded in the light of an abject and servile ceremony, importing a degree of humiliation on the part of the tenant degrading to the character of a freeman. There was one part of the ceremonial, however, which places it in a somewhat less odious light. At the conclusion of the homage, the lord was bound to kiss the tenant, and this, according to Britton, could never be dispensed with, whoever the lord might be; whether the king himself or any other, whether male or female, clerk or layman, old or young; and whoever the tenant might be, poor or rich, healthy or sick, ugly or fair, (*poure ou ryche, lede ou bele*.) *Britt.* c. 68. In the reign of Henry VI. a special act of parliament was passed, to excuse the kissing in the case of homage made to the king, by reason of pestilence. *Rot. Parl.* 18 Hen. VI. n. 58. *Hal. MSS.*

**HOMAGE ANCESTREL**, (or **AUNCESTREL**.) L. Fr. In old English law. A species of tenure, where a man and his ancestors had immemorially holden land of another and his ancestors, by the service of homage. *Litt.* sect. 143. 2 *Bl. Com.* 300. This bound the lord to warranty, in the ancient sense of homage. *Id. ibid.* *Hargr. Co. Litt.* Note 12, lib. 2. See *Homagium*.

**HOMAGE JURY**. In English law. The jury in a court baron; so called, because it most commonly consisted of such as owed homage to the lord of the fee. *Cowell*. See *Homagium*. Otherwise called *pares curiæ*, peers of the court. 2 *Bl. Com.* 54, 366.

**HOMAGE LIEGE**. See *Homagium ligium*.

**HOMAGER**. In English law. One that does, or is bound to do homage. *Cowell*.

**HOMAGIUM**, L. Lat. [quasi *hominis agium*; the tenant promising to be his lord's man; *se domini hominem acturum*. *Spelman*.] In feudal law. Homage. Called also, anciently, *hominium*, *hominatus*, *hominatio*, *hominiscum*, and *hominiscatus*. *Hominium*, according to *Spelman*, was the most ancient form. Lord Coke says it is called in English *manhood*, and that manhood and homage is all one. *Co. Litt.* 64 b.

*Homagium est juris vinculum quo quis tenetur et astringitur ad warrantizandum, defendendum et acquietandum tenentem suum in seysina sua versus omnes, per certum servitium in donatione nominatum et expressum, et etiam, vice versâ, quo tenens re-obligatur et astringitur ad fidem domino suo servandam, et servitium debitum faciendum*; homage is a bond of law by which one is held and bound to warrant, defend and acquit his tenant in his seisin, against all persons, by the certain service named and expressed in the gift; and also, on the other hand, by which the tenant in return is obligated and bound to keep his faith to his lord, and to perform the service due. *Bract.* fol. 78 b. See *Fleta*, lib. 3, c. 16, § 8.

**HOMAGIUM LIGIUM**. L. Lat. In feudal law. Liege homage; that kind of homage which was due to the sovereign alone, as supreme lord, and which was done without any saving or exception of the rights of other lords. *Spelman*, voc. *Homagium*. So called from *ligando*, (binding,) because it could not be renounced like other kinds of homage. *Id.*

**HOMAGIUM PLANUM**. L. Lat. In feudal law. Plain homage; a species of homage which bound him who did it to nothing more than fidelity, without any obligation either of military service or attendance in the courts of his superior. 1 *Robertson's Charles V.* Appendix, Note viii.

**HOMAGIUM SIMPLEX**. L. Lat. In feudal law. Simple homage; that kind of homage which was merely an acknowledgment of tenure, with a saving of the rights of other lords. *Hargr. Co. Litt.* note 18, lib. 2.

**HOMAGIUM REDDERE**. L. Lat. In old English law. To renounce homage; to give it up, or dissolve it. *Bract.* fol. 81 b.

**HOMBRES BUENOS**. Span. In Spanish law. Good men; fit men. *White's*

*New Recop.* b. 2, tit. 19, c. 3, § 1. Substantial citizens. *Schmidt's Civ. Law*, 216. Corresponding with the *boni* or *probi homines* of the old common law.

HOME. See *Domicile*.

HOMEAUS. L. Fr. In old English law. The Elms near Smithfield; the place of execution before Tyburn. *Kelham*.

HOMEHYNE. Sax. A domestic. *Spelman*. See *Hogenchyne*.

HOME PORT. A port in a state in which the owner of a ship resides.\* 1 *Brock. R.* 396, 404. But see 3 *Kent's Com.* 171, 172, note.

HOMESTEAD. The place of a home or house.\* That part of a man's landed property which is about and contiguous to his dwelling-house. *Parsons, J. 2 Metcalf's R.* 45, note. Called anciently, a *homestall*, or *homestale*. *Cowell*.

In the case of *True v. Estate of Morrill*, (28 *Vermont R.* 672,) it was held, under the Vermont homestead act, (defining a homestead, as consisting of "a dwelling-house, out-buildings and lands appurtenant, occupied as a homestead by a housekeeper, or the head of a family,") that the occupancy must be a *personal* one and not by a tenant. See *Compiled Statutes*, tit. 18, ch. 65, §§ 1, 4.

HOMICIDE. L. Fr. and Eng. [Lat. *homicidium*, from *homo*, a man, or human being, and *cædere*, to kill, or *cædes*, a killing.] In criminal law. The killing of one human being by another, (*hominis occisio ab homine facta*.) *Bract.* fol. 120 b. 4 *Bl. Com.* 177. See *Wharton's Am. Crim. Law*, b. 4, chap. 1. Divided by Blackstone (*ub. sup.*) into three kinds: justifiable, excusable, and felonious. 4 *Steph. Com.* 96, 97. See *Justifiable homicide*, *Excusable homicide*, *Felonious homicide*.

HOMICIDE PER INFORTUNIUM. Eng. and L. Lat. In criminal law. Homicide by misfortune, or accidental homicide; as where a man doing a lawful act, without any intention of hurt, unfortunately kills another; a species of excusable homicide. 4 *Bl. Com.* 182. 4 *Steph. Com.* 101. Called also *homicide per misadventure*. *Id. ibid.* 1 *Russell on Crimes*, 657. *Wharton's Am. Crim. Law*, § 934. Answering to the *homicidium ex casu*, (q. v.) of Bracton. See *Per infortunium*, *Per misadventure*.

HOMICIDE PER MISADVENTURE. See *Homicide per infortunium*.

## HOMICIDE SE DEFENDENDO.

Eng. and L. Lat. In criminal law. Homicide in self-defence; the killing of a person in self-defence upon a sudden affray; where the slayer had no other possible (or, at least, probable) means of escaping from his assailant. 4 *Bl. Com.* 183, 184—186. 4 *Steph. Com.* 103—105. A species of excusable homicide. *Id. ibid.* 1 *Russell on Crimes*, 660. *Wharton's Am. Crim. Law*, § 935.

HOMICIDIUM. Lat. Homicide. *Est dictum homicidium ab homine et cædo, quasi hominis cædium*; it is called *homicidium* from *homine* and *cædo*, as it were *hominis cædium*. *Bract.* fol. 120 b. See *Homicide*.

*Homicidium ex justitia*; homicide in the administration of justice, or in the execution of the sentence of the law. *Id. ibid.*

*Homicidium ex necessitate*; homicide from inevitable necessity, as for the protection of one's person or property. *Id. ibid.* See *Justifiable homicide*.

*Homicidium ex casu*; homicide by accident. *Id. ibid.* See *Excusable homicide*.

*Homicidium ex voluntate*; voluntary or wilful homicide. *Id.* fol. 121. See *Felonious homicide*.

HOMINATIO. L. Lat. [from *homo*, a man or vassal.] In old English law. Homage, or the doing of homage. *Spelman*, voc. *Homagium*. *Domesday. Blount*.

HOMINES LIGII. L. Lat. In feudal law. Liege men; feudal tenants or vassals, especially those who held immediately of the sovereign. 1 *Bl. Com.* 367. See *Homo ligius*.

HOMINIUM. L. Lat. [from *homo*, a man or vassal.] In old English law. Homage. This, according to *Spelman*, was the original, and anciently the more common term, which afterwards gave place to *homagium*. *Spelman*, voc. *Homagium*.

HOMIPLAGIUM. L. Lat. [from *homo*, a man, and *plaga*, a wound.] In old English law. The maiming of a man. *LL. Hen. I.* c. 80. *Blount*.

HOMME. Fr. Man; a man. This term is defined by the Civil Code of Louisiana, to include a woman. Art. 3522, n. 1. 2. See *Homo*.

HOMMES DE FIEF. Fr. In feudal law. Men of the fief; feudal tenants, the peers in the lord's courts. *Esprit des Lois*, liv. 28, c. 27.

**HOMMES FEODAUX.** Fr. In feudal law. Feudal tenants; the same with *hommes de fief*, (q. v.) *Esprit des Lois*, liv. 28, c. 36.

**HOMO.** Lat. A man. (See *Homo*, in feudal law.) *Homo consiliarius*, et in lege peritus; a counsellor, and learned in the law. 10 Co. 61.

A human being, including both male and female. *Hominis appellatione, tam fœminam quam masculum contineri, non dubitatur*; that both female as well as male is included under the term *homo*, is not doubted. *Dig.* 50. 16. 152. This exposition of the civil law is followed in the common law, and formally adopted in some modern codes. 2 *Inst.* 45. See *Homme*.

**HOMO.** L. Lat. In feudal law. A man; a vassal (*vassallus*, *vassus*;) a military or feudal tenant or retainer, (*miles*, *cliens feodalis*.) One who having received a fee or fief, was found to fight for his lord, and to do homage, and other military services. Called also *baro*, and more frequently *leudes*. *Spelman*, voc. *Homagium*. A tenant by knight service. *Id. ibid.* *Plenam itaque custodiam domini filiorum et hæredum hominum suorum, et feodorum suorum, ita quod plenam inde habent dispositionem*; the lords therefore have the entire wardship of the children and heirs of their tenants, and of their fees, so that they have the full disposition thereof. *Glanv.* lib. 7, c. 9. *Hugo Bardolf et Will. Stuteville consentire noluerunt quia erant homines comitis Johannis Moretonii*; Hugh Bardolf and William Stuteville would not consent, because they were the *men* of earl John Moreton. *Hoveden in Ric.* I. A. D. 1193.

Any tenant of lands, whether agricultural, (*socmannus*;) or military. *Spelman*, ub. *sub*.

Any retainer, dependant, servant, or person of inferior or servile condition; (*cliens*, *famulus*, *subditus*.) *Id. ibid.*

*Homo casatus.* One who did service within a house, (*qui in ædibus servit*.) *Capitular.* lib. 5, c. 136. *Spelman*, voc. *Homagium*. But see *Casatus*.

*Homo chartularius.* A slave manumitted by charter. *Capitular.* lib. 6, c. 208.

*Homo commendatus.* One who surrendered himself into the power of another, for the sake of protection or support. *L. Ripuar.* tit. 72, § 5. See *Commendatus*.

*Homo ecclesiasticus.* A church vassal; one who was bound to serve a church, especially to do service of an agricultural character. *Capitular.* lib. 5, c. 151. *Spelman*, voc. *Homagium*.

*Homo exercitalis.* A man of the army (*exercitus*;) a soldier. *LL. Longob.* lib. 1, tit. 9, l. 21. *L. Wisigoth.* lib. 19, tit. 2, l. 9.

*Homo feodalis.* A vassal or tenant; one who held a fee (*feodum*;) or part of a fee. *Spelman*, ub. *sup*.

*Homo fiscalis* or *fiscalinus.* A servant or vassal belonging to the treasury or *fiscus*. *Id. Formull. Solenn.* c. 90.

*Homo francus.* A freeman. See *Francus*. A Frenchman. See *Francus*.

*Homo ingenuus.* A free man. *L. Ripuar.* tit. 31, § 1. A free and lawful man. *Spelman*, voc. *Ingenuus*. A yeoman. *Id. ibid.*

*Homo liber.* A freeman. See *Liber homo*.

*Homo ligius.* A liege man; a subject; a king's vassal. *Spelman*, voc. *Homagium*, *Ligius*. The vassal of a subject. *Id. ibid.*

*Homo novus.* A new tenant or vassal; one who was invested with a new fee. *Spelman*, voc. *Homagium*.

*Homo pertinens.* A feudal bondman or vassal; one who belonged to the soil, (*qui glebæ adscribitur*.) *LL. Longob.* lib. 1, tit. 16, l. 8.

*Homo regius.* A king's vassal. *L. Ripuar.* tit. 11, § 3.

**HOMO ROMANUS.** Lat. A Roman. An appellation given to the old inhabitants of Gaul and other Roman provinces, and retained in the laws of the barbarous nations. *L. Salic.* tit. 34, § 3. *Id.* tit. 43. §§ 6—8. *Spelman*.

**HOMOLOGARE.** Græco-Lat. [from Gr. *ὁμολογέιν*, to consent, assent, confess.] In the civil law. To confirm or approve; to consent, or assent; to confess. *Calv. Lex.* Sometimes corruptly written *emologare*.

**HOMOLOGATE.** [from *homologare*, q. v.] In modern civil law. To approve, to confirm; as a court *homologates* a proceeding. See *Homologation*. Literally, to use the same words with another, (Gr. *ὁμός*, same, and *λόγος*, word;) to say the like. *Martin, J. 9 Martin's (La.) R.* 324. To assent to what another says or writes.

**HOMOLOGATION.** [from *homologare*, q. v.] In modern civil law. Approbation or confirmation by a court; as of an award,

a partition, &c. *Civil Code of Louis.* art. 3096, 1296, 1297, 1299.

In Scotch law. An act by which a person approves of a deed, the effect of which is to render that deed, though in itself defective, binding upon the person by whom it is homologated. *Bell's Dict.* Confirmation of a voidable deed.

**HOMOLOGUS.** Lat. In feudal law. A liege vassal. The same, according to the feudists, as *homologus*. But Spelman and Calvin disapprove this derivation.

**HOMONYMIE.** Græco-Lat. [from Gr. *ὁμός*, same, and *ὄνομα*, name.] A term applied, in the civil law, to cases where a law was repeated, or laid down in the same terms or to the same effect, more than once. Cases of iteration and repetition. *Bacon's Works*, iv. 371. For an illustration of *homonymie*, in judicial decisions, see the American cases referred to by Chancellor Kent. 2 *Kent's Com.* 489, note.

**HOMSTALE.** Sax. [from *ham*, house, and *stal*, station.] In old English law. A mansion-house, or homestall. *Cowell.* See *Homestead*.

**HONDHABEND.** Sax. Having in hand. See *Handhabend*.

**HONESTE.** Lat. In civil and old English law. Honorably; with credit or propriety; in a manner becoming one's station; creditably; becomingly; virtuously. *Provideatur ei domus competens in qua possit honeste morari, quousque dos sua ei assignetur*; there shall be provided for her a sufficient house, in which she may tarry, or live creditably, until her dower be assigned her. *Bract.* fol. 96. *Mag. Cart.* c. 7. **Honeste vivere**; to live honorably, creditably or virtuously. One of the three general precepts to which the Institutes of Justinian reduced the whole doctrine of the law. *Inst.* 1. 1. 3. *Bract.* fol. 3, 3 b. This phrase is rendered by Blackstone, as well as Harris and Cooper, in their translations of the Institutes, "to live *honestly*." 1 *Bl. Com.* 40. But this is not the proper meaning of *honeste*, either in classical or law Latin. *Id. ibid.* Christian's note. See the quotation from Bracton, *supra*; and see *Honestus*.

**HONESTUS.** Lat. In civil and old English law. Of good character, or standing. *Coram duobus vel pluribus viris legalibus et honestis*; before two or more lawful and good men. *Bract.* fol. 61.

Proper or becoming. **Non omne quod licet honestum est.** What is lawful is not always becoming. *Dig.* 50. 17. 144.

**HONOR, HONOUR.** [L. Lat. *honor*.]

In feudal law. A seignior of the nobler sort, having several inferior lordships and manors dependent upon it, by the performance of customs and services. *Cowell. Termes de la Ley. Blount.* 1 *Steph. Com.* 202. The seignior of a lord paramount. 2 *Bl. Com.* 91. This term was introduced into England by the Normans, and anciently signified the feudal patrimony, estate or barony of a greater baron. It was called also a royal benefice or fee, and was always held of the king *in capite*. *Spelman.*

**HONOR COURTS.** In English law. Courts held within honors. *Stat.* 33 *Hen.* VIII. c. 37. *Stat.* 37 *Hen.* VIII. c. 18. *Cowell.*

To **HONOR.** In mercantile law. To accept a bill of exchange; to pay a bill or note when due.

**HONORARIUM.** Lat. In the civil law. An honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service; a lawyer's or counsellor's fee. *Dig.* 50. 13. 1. 10—12. Among the ancient Romans, advocates practiced *gratis*, for honor merely, or at most for the sake of gaining influence; being prohibited by the Cincian law from taking any fees or presents for their services. Under the emperors, the taking of fees to a certain limit (ten thousand sesterces, or about 80*l.* of English money,) was permitted. 3 *Bl. Com.* 28. *Tacit. Annal.* lib. xi. c. 5. The ancient idea continued, however, to be retained in the name (*honorarium*) given to the fees thus allowed, and is still preserved in that rule of the English law that a counsel can maintain no action for his fees. 3 *Bl. Com.* ub. *sup.* *Story on Bailm.* § 153.

**HONORARY SERVICES.** In English law. Services incident to grand serjeanty, and annexed commonly to some honor. *Cowell.*

**HONTFANGENETHEF.** *Cowell* thinks this word should be written *hondfangenethef*, signifying a thief taken *hondhabend*. But it is rather a misprint for *houtfangenethef*, a form or corruption of *outfangenethef*. Bracton uses both *hutfangtheffe*, and *utfangenethef*. *Bract.* fol. 122 b, 154 b. So *infangenethef* was otherwise written *hinfangtheffe*. *Id. ibid.* See *Outfangtheffe*.

**HONY.** L. Fr. Disgrace; evil. *Kelham.*

**HOPE.** In old English law. A valley. *Co. Litt.* 4 b.

**HORA.** Lat. In old English law. An hour. *Hora fit ex quadraginta momentis*; an hour consists of forty minutes. *Bract.* fol. 264, 359 b. *Fleta*, lib. 5, c. 5, § 31. 2 *Inst.* 318. See *Hour*.

**HORA AURORÆ.** L. Lat. In old records. The morning bell. *Cowell*.

**HORÆ JURIDICÆ.** Lat. In English practice. Juridical hours; hours for judicial business; hours during which judges sit in court. 2 *Inst.* 265. In Fortescue's time, the judges of England did not sit in the king's courts above three hours in the day, that is, from eight in the morning till eleven. *Fortescue de L. L. Angliæ*, c. 51. *Selden's note*, in loc.

**HORCA.** Span. [from Lat. *furca*, q. v.] In Spanish law. A gallows; the punishment of hanging. *White's New Recop.* b. 2, tit. 19, c. 4, § 1.

**HORDERIUM.** L. Lat. In old English law. A hoard; a treasure, or repository. *LL. Canut.* c. 104. *Cowell*.

**HORDEUM.** Lat. In old records. Barley. *Hordeum palmale*; beer barley, as distinguished from common barley, which was called *hordeum quadragesimale*. *Blount*.

**HORE.** L. Fr. Hour. *Kelham*.

**HORE.** L. Fr. Now; the present time. *Kelham*. See *Ore*.

**HORN.** In old Scotch practice. A kind of trumpet used in denouncing contumacious persons rebels, and outlaws; which was done with three blasts of the horn by the king's serjeant. This was called "putting to the horn;" and the party so denounced was said to be "at the horn." *Bell's Dict. voc. Denunciation. Skene de Verb. Sign. voc. Bannitus.* 1 *Pitc. Cr. Trials*, part 2, pp. 77, 80.

**HORN WITH HORN.** In old records. The promiscuous feeding together of horned cattle upon the same common. *Spelman. Cowell*. The intercommoning of horned cattle, where there was common *pur cause de vicinage*. *Blount*.

**HORN TENURE.** See *Cornage*. The Pusey estate in England was held by the tenure of a horn, which, on a bill filed in chancery, was ordered to be delivered up to the heir. 1 *Vern.* 273.

**HORNGELD.** Sax. [from *horn*, and *geld*, a payment.] In old English law. A tax within a forest, paid for horned beasts. *Crompt. Jurisd.* 197. *Cowell. Blount*.

**HORNING, or LETTERS OF HORNING.** In Scotch law and practice. A

warrant in the king's name, issued out under the signet, to charge persons to pay, or perform deeds within a prefixed time, upon pain of being declared outlaw, and having their goods poulded, [i. e. distrained,] &c. in case of disobedience. 1 *Forbes' Inst.* part 3, p. 22. See *Horn*. A species of diligence, [i. e. process] against a debtor, proceeding on the warrant of a decree of the court of session, directing the debt to be paid within a limited number of days; in default of which payment, the debtor incurs the charge of rebellion, and is thereupon liable to caption or arrest. *Brande*.

**HORREUM, Orreum.** Lat. In civil and old English law. A place for keeping grain; a granary. See *Custos horrei*.

A place for keeping fruits, wines, and goods generally; a store-house. *Calv. Lex. Brissonius. De mercibus in orreis.* *Bract.* fol. 48.

**HORS.** L. Fr. Out; out of; without. Probably derived, through *fors*, from the Latin *foris*; *f* and *h* being sometimes interchangeable letters. Thus *forsprise* is sometimes written *horsprise* or *horspris*. See *Foris, Forsprise*. *Hors son sen*; out of his sense or mind. *Britt.* c. 85. *Hors de pryson*; out of prison. *Stat. Mod. Lev. Fines. Hors de court*; out of court. *Yearb. T.* 2 Edw. II. 44. *Tener hors*; to keep out. *Britt.* c. 65.

**HORS DE SON FEE.** L. Fr. [L. Lat. *extra feodum*.] Out of his fee. *Britt.* c. 38. The name given, in the old books, to an exception or plea to avoid an action brought for rent issuing out of certain land, by one pretending to be the lord, or for some customs and services; for if the defendant could prove the land to be out of the compass of the plaintiff's fee, the action failed. *Termes de la Ley.* 3 *Reeves' Hist. Eng. Law.* 455. See *Extra feodum, District*.

**HORS PRIS.** L. Fr. Except. Literally translated by the Scotch *out taken*. *Hors pris clers, gentz de religion, et femmes*; except clerks, people of religion, and women. *Britt.* c. 29.

**HORTUS.** Lat. In the civil law. A garden. *Dig.* 32. 91. 5.

**HOSPES.** Lat. In civil and old English law. A guest. 8 *Co.* 32, *Calve's case*. See *Hospites*.

A host or entertainer. *Calv. Lex.* More commonly *hospitator*, (q. v.)

**HOSPITARE.** Lat. [from *hospes*, q. v.]

In old English law. To entertain a guest. *Reg. Orig.* 105. *Hospitatus*; one entertained; a guest. *Id. ibid.* *Ad hospitandum.* *Id. ibid.* *Causa hospitandi*; for the purpose of being entertained as a guest. Lord Ellenborough, 4 *M. & S.* 310.

HOSPITATOR. L. Lat. [from *hospitare*, (q. v.) or according to Coke, from *hospitium*.] In old English law. An entertainer; a host. *Reg. Orig.* 105. 4 *M. & S.* 310. *Hospitator communis*; a common innkeeper. *Plowd.* 9, marg. 8 *Co.* 32, *Calye's case.* *Pro defectu hospitatoris*; for default of the host. Lord Ellenborough, 4 *M. & S.* 310.

HOSPITES. Lat. [plural of *hospes*, q. v.] Guests. *Reg. Orig.* 105. *Ut hospites*; as guests. 1 *Salk.* 25, pl. 10.

HOSPITELARIUS. L. Lat. In old English law. A hospitaller. *Fleta*, lib. 2, c. 50, § 16.

HOSPITIA. Lat. [pl. of *hospitium*, q. v.] In old English law. Inns. *Hospitia communia*; common inns. *Reg. Orig.* 105. *Hospitia curiæ*; inns of court. *Hospitia cancellariæ*; inns of chancery. *Crabb's Hist. Eng. Law*, 428, 429. 4 *Reeves' Hist.* 120.

HOSPITIUM. Lat. In old English law. An inn, hospice, or hostel. *Commune hospitium*; a common inn. 8 *Co.* 32, *Calye's case.* *Hob.* 245 b. See *Intra hospitium*.

A household. *Hospitium regis*; the king's household. *Fleta*, lib. 2, c. 2, § 2.

HOST, *Hoste*, *Houst*. L. Fr. An army. *Britt.* c. 22.

A military expedition; war. *Kelham*.

HOSTAGE. In international law. A person given up to an enemy, as a security for the performance of a contract made between belligerent powers, or their subjects or citizens. See 1 *Kent's Com.* 106.

HOSTAGIUM. This word is given by Blount from the *Monasticon Anglicanum*, par. 1. fol. 348 b, without any signification. It probably signified a tax or tribute towards the support of an army, (*hostis* or *hostium*.)

HOSTE. L. Fr. A host, or entertainer. *Kelham*.

A guest. *En droit de hostes, volons que chescun respoyne pur son hoste que il avera herberge, &c.*; in right [or, as to the law] of guests, we will that every one shall answer for his guest, whom he shall have harbored, &c. *Britt.* c. 12.

HOSTEL, *Hostell*. L. Fr. A house-

hold. *Britt.* fol. 1 b. *Artic. sup. Chart.* c. 2.

HOSTELAGIUM. L. Lat. In old records. A right to receive lodging and entertainment, anciently reserved by lords in the houses of their tenants. *Cowell*.

HOSTELER, *Hostiler*. [Fr. *hostelier*.] An innkeeper. *Cowell*. *Blount*.

HOSTENDUCLÆ, *Hostenditiæ*. L. Lat. [from *hostis*, an army.] In feudal law. A tribute or aid resembling scutage. *Spelman*. An aid (*adjutorium*) paid by those vassals who did not accompany their lords when they went with the king to war. *Feud. Lib.* 2, tit. 40, § 2.

HOSTES. Lat. [pl. of *hostis*, q. v.] Enemies. *Hostes hi sunt qui nobis, aut quibus nos publice bellum decrevimus, ceteri latrones aut prædones sunt*; enemies are those who declare war against us, or against whom we declare war, publicly; all others are pirates or robbers. *Dig.* 50. 16. 118. See *Id.* 49. 15. 24. This definition of the civil law is accurately given by Blackstone, but carelessly quoted by Coke. 1 *Bl. Com.* 257. 7 *Co.* 24 b, *Calvin's case*.

HOSTIA. Lat. In old records. The host, bread or consecrated wafer in the eucharist. *Cowell*.

HOSTIARIUS. L. Lat. [from *hostium*, for *ostium*, a door.] In old English law. A door-keeper. *Fleta*, lib. 2, c. 14, §§ 2, 5.

HOSTILE. [from Lat. *hostilis*, from *hostis*, an enemy.] Having the character of an enemy; standing in the relation of an enemy. See 1 *Kent's Com.* Lect. iv.

HOSTILITY. In the law of nations. A state of open war. "At the breaking out of hostility." 1 *Kent's Com.* 60.

An act of open war. "When hostilities have commenced." *Id.* 56.

A hostile character. "Hostility may attach only to the person." *Id.* Lect. iv.

HOSTIS. Lat. An enemy; one who makes war by an open formal proclamation of hostility. See *Hostes*.

HOSTIS. L. Lat. [from Fr. *hoste*.] A host or army. This sense of the word is common in ancient European laws, proceedings of councils, and authors of the middle ages. *Spelman*. See *Feud. Lib.* 2, tit. 40, § 2.

HOSTIUM. L. Lat. In old European law. A host or army. *Spelman*, voc. *Hostis*.

Used also for *ostium*, a door. *Ad hostium ecclesiæ*; at the church door. *Bract*.

fol. 303. *Custodes hostiorum*; door-keepers. *Stat. Westm.* 2, c. 44. *Fleta*, lib. 2, c. 39.

**HOTCHPOT.** [Sax. *hutspot*, *hotspot*; L. Fr. *hochepot*; L. Lat. *in partem positio*, —*collatio*.] A mixing or blending together; a commixion or commixture of divers things together.\* *Co. Litt.* 177 a. A throwing of one or more separate portions into a common stock.\* Anciently applied to the mixing and blending of lands given to one daughter in frank-marriage, with those descending to her and her sisters in fee simple, for the purpose of dividing the whole equally among them; without which, the daughter who held in frank-marriage could have no share in the lands in fee simple. *Litt.* sect. 267, 268. *Co. Litt.* 177 a. 2 *Bl. Com.* 190. To put in *hotchpot*, or bring into *hotchpot*, (L. Fr. *mitter en hotchpot*), signified to make this mixture. *Litt.* sect. 267, 268. These terms are traced by Blackstone, after Spelman, to the *mittere in confusum*, of the law of the Lombards. 2 *Bl. Com.* 190. The word *hotchpot* is considered by Webster as of French origin; but Lord Coke treats it as another form of the Sax. *hotspot*, a pudding or mixture of different ingredients, and Littleton expressly gives it this meaning. *Litt.* sect. 267. *Co. Litt.* 177 a. Spelman writes it *hotchpotch*, which form is also used in some of the old reports. 2 *Rep. in Ch.* 360. And see *Bacon's Works*, iv. 255.

*Hotchpot*, or the *putting in hotchpot*, is applied in modern law to the throwing the amount of an advancement made to a particular child in real or personal estate, into the common stock, for the purpose of a more equal division, or of equalizing the shares of all the children. 2 *Bl. Com.* 516, 517. 2 *Kent's Com.* 421, 422. 4 *Id.* 418, 419. This answers to, or resembles the *collatio bonorum*, or *collation* of the civil law. *Id. ibid.* See *Collatio bonorum*. The term has been applied by Mr. Justice Story in a case of salvage. 1 *Sumner's R.* 400, 421. It has also been applied, in insurance law, to the interests of the owners of a vessel. 14 *East*, 522.

**HOUAWARTH.** [quasi *hofwarde*, from Sax. *hof*, a house, and *werde* or *warde*, a guard.] In old European law. One that keeps or guards a house, (*ædium vel aulæ custos*.) Spelman. *L. Baivarior.* tit. 19, § 9.

**HOOR.** [Lat. *hora*.] The twenty-fourth

part of a day, consisting of sixty minutes. In the old books it is said to consist of forty minutes, or moments. *Bract.* fol. 264. *Fleta*, lib. 5, c. 5, § 31. 2 *Inst.* 318. In the note to 2 *Bl. Com.* 140, the word *forty* in 2 *Inst.* 318, is called a misprint. But Lord Coke merely copied from Bracton, or *Fleta*, both of whom very plainly use the word *quadraginta*. See *Hora*.

**HOOR OF CAUSE.** In Scotch practice. The hour when a court is met. 3 *How. State Trials*, 603.

**HOUSE.** [from Sax. *hus*; Lat. *domus*.] A building intended for human habitation. 14 *Mees. & W.* 181. "We all think," observes Pollock, C. B. in this case, "that the term *house*, *primâ facie*, means a *dwelling-house*. *Id.* 185. And see 4 *Man. Gr. & Scott*, 105. But in 7 *Man. & Gr.* 122, it was said that a *house* does not necessarily mean a *dwelling-house*. Creswell, J. *Id.* 136. A building calculated to be used as a dwelling-house, though not used as such, is properly described as "a *house*." *Id.* 122. This was decided under the statute 2 Will. IV. c. 35. A building divided into floors and apartments, with four walls, a roof, a door and chimneys, would be considered in ordinary parlance between man and man, as a *house*. Tindal, C. J. *Id.* 125. See *Domus*, *Dwelling-house*.

By the grant of a messuage or *house*, the orchard, garden and curtilage occupied therewith will pass, (but *contra*, as to the garden;) and so an acre or more may pass by the name of a *house*. So, by a devise of a messuage or *house*, land will pass; but what shall be said to pass by a devise is a question of intention. 1 *Crabb's Real Prop.* 68, § 87. In Pennsylvania, it has been held that, in the devise of a *house* in a will, the word "*house*" is synonymous with "*messuage*," and conveys all that comes within the curtilage. 4 *Rawle's R.* 339. 4 *Penn. St. (Barr's) R.* 93. But this is doubted. 2 *Hilliard's Real Prop.* 543. 1 *Jarman on Wills*, 709, (606, 607, Perkins' ed. notes.) For the meaning of the word *house* in the law of arson and burglary, see *Wharton's Am. Crim. Law*, §§ 1555—1576. *Id.* § 1667.

**HOUSE.** A legislative body; the quorum of a legislative body. The term *house* means the members present doing business. 2 *Michigan (Gibbs) R.* 287.

**HOUSEBOTE, Housbote.** [from *house*, and Sax. *bote*, an allowance.] An allowance of wood made to a tenant, for repairing

his house. Necessary timber which a lessee for years, or for life, is allowed to cut off the ground let to him, for the purpose of repairing the houses upon the same ground.\* *Termes de la Ley*. 2 *Bl. Com.* 35. *Bract. fol.* 408. It is sometimes said to include necessary wood for burning in the house; though the latter is more properly called by the distinct name of fire-bote. *Co. Litt.* 41 b. 2 *Bl. Com.* 35. Bracton (*ub. sup.*) makes a clear distinction between them.

**HOUSEHOLD.** A family living together. Platt, J. 18 *Johns. R.* 400, 402. Those who dwell under the same roof and compose a family. Webster. A man's family living together constitutes his household, though he may have gone to another state. 18 *Johns. R. ub. sup.*

Belonging to the house and family; domestic. Webster.

"HOUSEHOLD FURNITURE," in a will, includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, china, both useful and ornamental, and pictures. But goods in trade, books and wines will not pass by a bequest of household furniture. *Ambl.* 605, 610. 1 *Roper on Legacies*, 268, 270. *Ward on Legacies*, 215. 2 *Williams on Exec.* 1021. 1 *Johns. Ch. R.* 329. See *Supellx.*

"HOUSEHOLD GOODS," in a will, include every thing of a permanent nature, (i. e. articles of household which are not consumed in their enjoyment,) that are used in, or purchased or otherwise acquired by a testator for his house. 1 *Roper on Legacies*, 253, and cases there cited. *Ward on Legacies*, 217. 2 *Williams on Exec.* 1017.

"HOUSEHOLD STUFF," in a will, includes every thing which may be used for the convenience of the house, as tables, chairs, bedding and the like. But apparel, books, weapons, tools for artificers, cattle, victuals and choses in action will not pass by those words, unless the context of the will clearly show a contrary intention. 1 *Roper on Legacies*, 273. *Shep. Touch.* 447.

**HOUSEHOLDER.** The occupier of a house. Brande. More correctly, one who keeps house with his family; the head or master of a family. Webster. Platt, J. 18 *Johns. R.* 302. See 19 *Wendell's R.* 475. 14 *Barbour's R.* 456. A *pater familias*. 8 *Mod.* 40. One who has a household; the head of a household. See *Household*.

**HOUSEKEEPER.** One who keeps or occupies a house, as distinguished from a boarder, inmate or lodger.\* A person actually occupying part or the whole of a house, being the party responsible to the landlord for the entire rent, and assessed or liable for parochial rates and taxes. 3 *Petersd. Abr.* 103, note. Webster makes it synonymous with *householder*, but it has been decided otherwise. 1 *Dowl. P. C.* 172. The principle requiring bail to be a housekeeper is a salutary rule, as it excludes persons who have not a *fixed, permanent and known residence*. Ashton, J. *Lofft*, 148.

**HOVEL.** In English law. A shed put up in a field, for sheltering cattle or utensils. 2 *W. Bl.* 683, note. Derived from the word to *heave*. *Id. ibid.*

**HOWE.** In old English law. A hill. *Co. Litt.* 5 b.

**HUCUSQUE.** Lat. In old pleading. Hitherto. 2 *Mod.* 24.

**HUDEGELD.** Sax. In old English law. An acquittance for a trespass or assault committed upon a trespassing servant, (*quietancia transgressionis illatae in servum transgredientem.*) *Fleta*, lib. 1, c. 47, § 20. Cowell and Blount make this word to be a misprint for *hinegeld*. In the additions to Cowell, it is supposed to be the same with *hidegeld*, a sum paid by a villein or servant to save himself from being whipped.

**HUE AND CRY.** [L. Lat. *hutesium et clamor*; *clamor popularis*; L. Fr. *crie de pays*.] In English law. A loud outcry with which felons, (such as robbers, burglars and murderers,) were anciently pursued, and which all who heard it were bound to take up, and join in the pursuit, until the malefactor was taken. *Bract. fol.* 115 b, 124. The ancient law was that where a felony had been committed, and the felon fled and could not be taken, hue and cry was to be immediately raised, (*statim levetur hutesium*.) and pursuit (*secta*) made after him from town to town, (*de villa in villam*.) or from one district to another, (*de terra in terram*.) until he was taken; otherwise the township (*villata*) where the felony was committed was liable to be amerced. *Bract. ub. sup.* The hue and cry might be by horn, and by voice, (*de corne et de bouche*;) and in Scotland it was raised by blowing a horn, with which the *la meyne de corne* of Britton corresponds. 2 *Inst.* 173. *Skene de Verb. Signif. voc.*

*Hutesium*. *Britt.* c. 27. Its object was to raise the country, or to give general notice to the neighboring inhabitants, so as to secure an immediate and effectual pursuit. It is now discontinued in England, having given place to the ordinary complaint made to a peace officer, on commission of a felony; but a modification of it exists in the outcry made upon the escape of a thief, which is still common there as well as in the United States. 4 *Steph. Com.* 360, 361. The public and general pursuit made after felons, upon complaint made, is still retained. *Id. ibid.*

The words *hue* and *cry*, according to the best authority, are of the same signification; *hue* being derived from the Fr. *huyer*, to cry out or exclaim. *Spelman.* 2 *Inst.* 173. Bracton uses *hue* (*hutesium*) alone, in some passages. *Bract.* fol. 115 b, 124. Glanville, on the other hand, uses *cry*, (*clamor*,) without *hue*, calling it the *cry* of the country, (*clamor popularis*;) and so does the statute of Westminster 1, c. 9, (*crie de pays*.) Fleta calls it *clamor patriæ*, and, in another passage, *clamor per hutesios*. Fleta, lib. 1, c. 24, § 1; c. 27, § 1. Skene derives *hue* from the Fr. *oyes*, hear; and Manwood from the Lat. *heu*, an expression of complaint. See *Cowell*. And see *Clamor*, *Crie de pais*, *Hutesium*.

**HUE AND CRY.** In English practice. A written proclamation issued on the escape of a felon from prison, requiring all officers and people to assist in retaking him. 3 *How. St. Trials*, 386.

**HUEBRAS.** Span. A measure of land equal to as much as a yoke of oxen can plough in one day. 2 *White's Recop.* [38,] 49. 12 *Peters' R.* 443.

**HUIS**, *Huys*, *Hus*. L. Fr. [from Lat. *ostium*.] A door. *Al huis d'esglise*; at the church door. *Litt.* sect. 39. *Al huys de moustre*. *Britt.* c. 107. *Al hus de moustre*. *Ycarb. M.* 3 Edw. II. 53.

**HUISSIER.** Fr. [from *huis*, a door.] In French law. A name given to the executive officers of courts of justice, whose original function was that of a door-keeper. *Brande*. The English word *usher* is from this source.

**H'UIT.** A contraction of *Habuit*. 1 *Instr. Cler.* 10.

**HULKA.** L. Lat. In old records. A hulk or small vessel. *Cowell*.

**HULLUS.** L. Lat. In old records. A hill. 2 *Mon. Angl.* 292. *Cowell*.

**HULMUS.** See *Holm*.

**HUM**, *Huem*. L. Fr. Corrupt forms of *home*, (q. v.) *Kelham*.

**HUNDRED.** [L. Lat. *hundredus*, *hundredum*, *hundreda*; *centena*, *centuria*.] In English law. A portion or subdivision of a county; so named, because originally composed of ten tithings, or consisting, as is supposed, of one hundred freemen or frank pledges, although the number of one hundred does not seem to have been invariable. *Spelman*. Its establishment is generally ascribed to Alfred, and it is supposed to have been introduced from the continent where a similar territorial division, under the name of *centena*, prevailed from a very early period. See *Centena*. Its essential use was in the liability of the hundredors, (or families composing it,) where offences were committed within their district, either to produce the offender or make good the damage, and this feature, which seems to have always belonged to it, is still to a limited extent retained. 1 *Bl. Com.* 115. See *Hundredor*. Its ancient importance arose, in a great degree, from the court which was regularly held in it for the trial of causes, called the *hundred court*, now disused. See *Hundred Court*. It was governed by an officer called *dominus hundredi*, (lord of the hundred,) *aldermannus hundredi*, (alderman of the hundred,) or *hundredarius*, (hundredary;) and is now under the government of a high constable or bailiff. *Spelman*. *Crabb's Hist. Eng. Law*, 17. 1 *Bl. Com.* 115. 1 *Steph. Com.* 117. In some of the more northern counties, hundreds are called *wapentakes*. *Id. ibid.* and notes.

**HUNDRED COURT.** [L. Lat. *curia hundredi*.] In English law. A larger court baron, being held for all the inhabitants of a particular *hundred*, instead of a manor. The free suitors are the judges, and the steward the registrar, as in the case of a court baron. It is not a court of record, and resembles a court baron in all respects except that in point of territory it is of greater jurisdiction. Like several other inferior courts, however, it has fallen into disuse, and is not now resorted to. 3 *Bl. Com.* 34, 35. 3 *Steph. Com.* 394, 395. This is not to be confounded with the hundred court of the Saxon times, called *hundred gemote*, (q. v.)

**HUNDRED GEMOTE.** [L. Lat. *curia centuriæ*, or *hundredi*; *hundredum*.] In Saxon law. A meeting or court of a hun-

dred. See *Gemote*. A court held for every hundred, by the hundredors or inhabitants of the district, who were compelled to attend under heavy penalties. It was of considerable importance and distinction, being a court of civil and criminal jurisdiction, and having cognizance, like the county court, of ecclesiastical as well as civil matters. *Spelman*, vocc. *Hundredus*, *Gemotum*. 1 *Reeves' Hist. Eng. Law*, 7. *Crabb's Hist.* 27.

**HUNDRED LAGH.** Sax. The law of the hundred, or hundred court; liability to attend the hundred court. *Spelman*, voc. *Hundredus*. Cowell and Blount translate it, *hundred court*.

**HUNDRED PENNY.** In old English law. A tax collected from the hundred, by the sheriff or lord of the hundred. *Spelman*, voc. *Hundredus*.

**HUNDRED SETENA.** Sax. In Saxon law. The dwellers or inhabitants of a hundred. 1 *Mon. Angl.* 16. *Cowell. Blount.* *Spelman* suggests the reading of *sceatena*, from Sax. *sceat*, a tax.

**HUNDRED WEIGHT.** A denomination of weight containing one hundred and twelve pounds. *Brande.* For the weight of the old *centena* or hundred, see *Fleta*, lib. 2, c. 12, §§ 4, 5. And see *Centena*.

By the Revised Statutes of New-York, a hundred weight is made to consist of one hundred pounds avoirdupois. 1 *Rev. Stat.* [611, § 35.] 621, § 39.

**HUNDREDA.** L. Lat. In old English law. A hundred. *Spelman*, voc. *Hundredus*.

**HUNDREDARIUS.** L. Lat. In old English law. A hundredary, or hundredor. A name given to the chief officer of a hundred, as well as to the freeholders who composed it. *Spelman*, voc. *Hundredus*.

**HUNDREDARY.** [L. Lat. *hundredarius*.] The chief or presiding officer of a hundred. See *Hundredarius*.

**HUNDREDORS.** In English law. The inhabitants or freeholders of a hundred, anciently the suitors or judges of the hundred court. See *Hundred*. Persons impanneled or fit to be impanneled upon juries, dwelling within the hundred where the cause of action arose. *Crompt. Jur.* 217. It was formerly necessary to have some of these upon every panel of jurors. 3 *Bl. Com.* 359, 360. *Id.* 352. 4 *Steph. Com.* 370.

The term *hundredor* was also used to signify the officer who had the jurisdiction

of a hundred, and held the hundred court, and sometimes the bailiff of a hundred. *Termes de la Ley. Cowell.*

The inhabitants of a hundred in which any damage is done by rioters feloniously demolishing buildings or machinery, are liable to make it good to the party injured. *Stat.* 7 & 8 Geo. IV. c. 31, ss. 2, 3. *Stat.* 2 & 3 Will. IV. c. 72. 4 *Steph. Com.* 275. This liability was anciently much more extensive and constituted a peculiar feature of the hundred from the earliest times. See *Hundred*.

**HUNDREDUM.** L. Lat. In old English law. A hundred; the subdivision of a county or shire. *Spelman*, voc. *Hundredus*.

The ancient hundred court. *Qualiter hundredum teneri debeat*; how the hundred ought to be held. *LL. Inæ, apud Spelman, ub. sup.* *Hundreda*; hundreds or hundred courts. *LL. Edw. Conf.* c. 35.

The privilege or immunity of being quit or free from payments or customs due to hundredors, or the governors of hundreds. *Spelman, voc. Hundredus. Termes de la Ley.*

**HUNDREDUS.** L. Lat. A hundred. *Spelman.*

**HUNT'.** The abbreviation of Huntingdonshire, in old English pleadings and records. *Towns. Pl.* 147. 1 *Inst. Cler.* 28.

**HURDEREFEST.** Sax. [from *hyred*, a family, and *fæst*, fixed.] In old English law. One who is fixed or settled in a certain family. *Spelman.* Called by Bracton, *husfastene*, (q. v.)

**HURDLE.** In English criminal law. A kind of sledge, on which convicted felons were drawn to the place of execution. See *Draw, Drawing to execution*.

**HURST, Hirst.** [Sax. *hyrst*.] In old English law. A wood. *Spelman. Co. Litt.* 4 b.

**HURTO.** Span. [from Lat. *furtum*, q. v.] In Spanish law. Theft. *White's New Recop.* b. 2, tit. 20.

**HUS.** Sax. House; a house. See *Husbrec*.

**HUS.** L. Fr. Door; a door. See *Huis*.

**HUS AND HANT.** These words occur in a record of the *Curia Regis* in the 27th year of Henry III. (rot. 9,) setting forth that a certain H. P. being arrested on the complaint of merchants of Flanders and imprisoned, offers to the king *Hus and Hant* in pledge, (*offert domino regi Hus et Hant in plegio*,) to stand to the right, and to answer to the aforesaid merchants, and to all others who will complain against him. And divers persons come who become bail

that the said H. P. shall appear by Hus and Hant, (*manucapiunt quod dictus H. P. per hus et hant veniet*,) at the king's summons, &c. Spelman suggests that this may be *common bail* by fictitious persons, like the more modern John Doe and Richard Roe. But the proceeding more nearly resembles the giving of *special bail*.

**HUSBAND AND WIFE.** An important relation created by marriage. For a comprehensive view of the rights and duties growing out of it, see 2 *Kent's Com.* 129—187, Lect. xxviii.

**HUSBAND LAND.** In old Scotch law. A quantity of land containing commonly six acres. *Skene de Verb. Sign.*

**HUSBANDRIA.** L. Lat. In old English law. Husbandry. *Dyer*, 35 b. (Fr. ed.) *Yearb.* T. 18 Hen. VI. 2. Whether husbandry was an *art*, see the discussion, *ibid.*

**HUSBANDUS.** L. Lat. [from Sax. *hus*, house, and *band*, a bond.] In old Scotch law. The head of a family, employed in agriculture; (Lat. *æconomus*, Fr. *mesnagier*.) *Stat. David II. Reg. Scot.* c. 43. *Spelman*.

**HUSBREC.** Sax. [from *hus*, house, and *bryce*, breach.] In Saxon law. The crime of house-breaking, or burglary. *Crabb's Hist. Eng. Law*, 59, 308.

**HUSCARLE.** Sax. [from *hus*, house, and *carl*, man.] In old English law. A house servant, or domestic; a man of the household, (*vir e familia*.) *Spelman*.

A king's vassal, thane or baron; an earl's man, or vassal. A term of frequent occurrence in Domesday Book. *Domesd.* tittt. *Middlesex*, *Rogierius comes*, *Ticheham*. *Id.* tittt. *Bockinghamschire*, *Hugo comes*, *Sencelai*. *Id.* tittt. *Grentbrigsc.* comes *Alanus*, *Sidefam*.

**HUSFASTENE.** Sax. [from *hus*, house, and *fæst*, fixed.] In Saxon law. A term applied to one who held a house and land, (*qui terram tenet et domum*.) *Bract.* fol. 124 b. A householder, or one who had a fixed habitation, (*quasi domi-fixus*), as distinguished from one who went about from place to place, (*itinerans de loco in locum*.) *Id.* *ibid.* *Spelman*. All these were bound to be members of some frank pledge. *Bract.* *ub. sup.*

**HUSGABLUM.** Sax. and L. Lat. [from *hus*, house, and *gablum*, a rent.] In old records. House rent; or a tax or tribute laid upon a house. 3 *Mon. Angl.* 254. *Cowell*. *Blount*.

**HUSTINGS, Husting.** [from Sax. *hus*,

house, and *thing*, a cause, or plea; q. d. a house of causes, or place where causes are pleaded: L. Lat. *hustingum*, *hustingus*, *hustingia*, *hustengus*.] The principal court of the city of London, held before the lord mayor, recorder and aldermen; of which, however, the recorder is in effect the sole judge. It is the county court of London, but has cognizance of no actions that are merely personal. 3 *Steph. Com* 449, note (l). 2 *Inst.* 322. *F. N. B.* 22 H. It is of Saxon origin, and very high antiquity, as is proved by the record of a transaction before it, in the reign of Henry I. which Spelman gives at length. And see *Fleta*, lib. 2, c. 2, § 13. *Calthrop's R.* 131. The proper term seems to be *husting*, in the singular. See *Hustingus*. Other cities, besides London, appear to have had their *hustings*. See *Fleta*, *ub. sup.*

In Virginia, some of the local courts are called *hustings*, as in the city of Richmond. 6 *Grattan's R.* 696.

**HUSTINGUS, Hustengus.** L. Lat. In old English law. The husting, or principal court of London. *Apud London*, in *hustingo*; at London in the husting. *Bract.* fol. 127. *In London*, extra *hustingum*; in London, out of the husting. *Id.* fol. 133. *In hustengo*. *Fleta*, lib. 2, c. 55, § 2.

**HUTESIUM, Huthesium, Uthesium, Utesium.** L. Lat. In old English law. A hue, or outcry. *Bract.* fol. 115 b, 124. *Levare hutesium*; to raise the hue. *Id.* *ibid.* *Hutesium et clamor*; hue and cry. *Id.* 16 b, 115 b, 157. See *Hue and cry*.

**HUTFANGTHEFE.** Otherwise written *utfangthef*, (q. v.) *Bract.* fol. 123 b, 154 b.

**HUY.** L. Fr. [from Lat. *hodie*?] To-day. *Kelham*.

**HUYER.** L. Fr. To cry out, or proclaim. *Kelham*.

**HUYS.** L. Fr. A door. See *Huis*.

**HYBERNAGIUM.** L. Lat. [from *hibernus*, of winter.] In old English law. The season for sowing winter grain, between Michaelmas and Christmas. *Cowell*. The land on which such grain was sown. *Id.*

The grain itself; winter grain or winter corn. *Id.*

**HYDAGE.** See *Hidage*.

**HYDE.** See *Hide*.

**HYEMS, Hiems.** Lat. In the civil law. Winter. *Dig.* 43. 20. 4, 34. Written, in some of the old books, *yems*. *Fleta*, lib. 2, c. 73, §§ 10, 18.

HYL. L. Fr. A corrupt form of *il*, (q. v.) *Kelham*.

HYPOBOLON, *Hypobolum*. Græco-Lat. [from Gr. ὑποβάλλειν, to add a smaller to a larger thing or sum.] In civil, feudal and old European law. That which was given to a woman on the death of her husband, in addition to her dowry, (*dotis incrementum*.) *Calv. Lex*. It seems to have resembled the dower of the English law. *Id. ibid.*

HYPOTHEC. [from *hypotheca*, q. v.] In Scotch law. A right over a subject acquired by a creditor, while the subject over which this right is acquired remains in the possession of the debtor and proprietor of the subject. *Bell's Dict.*

HYPOTHECA. Græco-Lat. [from Gr. ὑποθήκη; from ὑποτιθέναι, to put under; Lat. *supponere*.] In the civil law. That kind of pledge in which the possession of the thing pledged remained with the debtor, the obligation resting in mere contract, without delivery, (*quæ sine traditione, nudâ conventionione tenetur*;) and in this respect distinguished from *pignus*, of which the possession was delivered to the creditor or pawnee. *Dig.* 13. 7. 9. 2. See *Id.* 20. 1. 5. 1. *Inst.* 4. 6. 7. 2 *Bl. Com.* 159. *Story on Bailm.* § 286. 2 *Story's Eq. Jur.* § 1005. Answering to the modern mortgage. 4 *Kent's Com.* 136. Literally, a putting under; a subjecting to an encumbrance or obligation. The Scotch *hypothec*, Spanish *hipoteca* or *hypotica*, and French *hypothèque* are closely formed from this word. *Ypoteca* is a Latin form occurring in the Register. *Reg. Orig.* 306 b.

The right or obligation arising from a pledge without delivery. *Dig.* 20. 1. 4. *Calv. Lex*. So far as the remedy (*actio hypothecaria*) for enforcing the creditor's right was concerned, there was no difference between *hypotheca* and *pignus*. *Inst.* 4. 6. 7. *Dig.* 20. 1. 5. 1.

HYPOTHECARIA ACTIO. Lat. In the civil law. An hypothecary action; an action for the enforcement of a *hypotheca*, or right of mortgage; or to obtain the surrender of the thing mortgaged. *Inst.* 4. 6. 7. 1 *Mackeld. Civ. Law*, 395, § 358. Adopted in the Civil Code of Louisiana, under the name of *l'action hypothécaire*, (translated, *action of mortgage*.) Art. 3361.

HYPOTHECARIJ CREDITORES. Lat. In the civil law. Hypothecary creditors; those who loaned money on the security of a *hypotheca*, (q. v.) *Calv. Lex*.

HYPOTHECATE. [from Græco-Lat. *hypotheca*, q. v.] To pledge a thing without delivering the possession of it to the pledgee. "The master, when abroad, and in the absence of the owner, may *hypothecate* the ship, freight and cargo, to raise money requisite for the completion of the voyage." 3 *Kent's Com.* 171.

HYPOTHECATION. [from Græco-Lat. *hypotheca*, q. v.] A pledge without possession by the pledgee. *Story on Bailm.* § 288. "The *hypothecation* of the ship or cargo is the transfer of a title to take effect conditionally." 2 *Phillips on Ins.* 296. See *Hypothecate*.

HYPOTHEQUE. Fr. [from Græco-Lat. *hypotheca*, q. v.] Translated mortgage, in the Civil Code of Louisiana. Art. 3360.

HYTHIE. Sax. In English law. A port, wharf or small haven, to embark or land merchandise at. *Cowell. Blount*.

## I.

1. The initial letter of the word *Instituta*, used by some civilians in citing the Institutes of Justinian. *Tayl. Civ. Law*, 24.

I, at the beginning of words having the first syllable *In*, commonly denotes a derivation from the Latin, as E, in a similar position, indicates a derivation from the French. See *E*. But I and E were formerly, in many instances, used as initial letters indifferently, and in some words the practice continues to be retained.

I, in the Latin of the civil law, is sometimes used for e; as *petitioni* for *petitione*, *affinitati* for *affinitate*, and *vice versa*. So it occasionally occurs in place of u, as *recipere* for *recuperare*. *Calv. Lex*.

IBERNAGIUM. An old form of *hibernagium* or *hybernagium*, (q. v.)

IBI. Lat. There; in that place; the correlative of *ubi*. *Calv. Lex*. *Ibi semper debet fieri triatio ubi juratores meliorem possunt habere notitiam*. A trial ought always to be had where the jurors can have the best information. 7 Co. 1 b, *Bulwer's case*.

Therein; in that thing. *Calv. Lex*.

Then. *Id.*

IBID. An abbreviation of *ibidem*, (q. v.)

IBIDEM. Lat. In the same place.

In the same thing, matter or case.

IBIMUS. Lat. [from *ire*, to go.] We will go. *Nec super eum ibimus*; nor will we go, or pass upon him. *Magna Charta*,

c. 29. These words have been interpreted to mean, "nor will we sit in judgment upon him ourselves;" that is, he shall not be condemned in the court *coram rege*. 2 *Inst.* 46, 49. 1 *Reeves' Hist.* 249. But they seem to have imported a forcible rather than a judicial action on the part of the king. See 3 *Chitt. Bl. Com.* 41, note. And see *Nullus liber homo*.

IBM. A contraction of *ibidem*, (q. v.)

1 *Inst. Cler.* 10.

ICEE. L. Fr. There. *LL. Gul. Cong.* l. 2.

ICTUS. Lat. In old English law. A stroke or blow from a club or stone; a bruise, contusion or swelling produced by a blow from a club or stone, as distinguished from *plaga*, (a wound.) *Fleta*, lib. 1, c. 41, § 3.

ICTUS ORBUS. L. Lat. In old English law. A stroke which merely made a bruise or swelling, without breaking the skin. *Bract.* fol. 122.

ID. A common abbreviation of *idem*, (q. v.)

ID. Lat. That. *Id certum est quod certum reddi potest*. That is certain which can be made certain. 2 *Bl. Com.* 143. 1 *Id.* 78. 4 *Kent's Com.* 462. See *Certum*. *Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum*. That is certain which can be made certain, but that is more certain which is certain of itself. 9 *Co.* 47 a, *Earl of Shrewsbury's case*.

*Id perfectum est quod ex omnibus suis partibus constat*. That is perfect which consists of all its parts. 9 *Co.* 9.

*Id possumus quod de jure possumus*. We can do that which we can do lawfully. *Broom's Max.* Introd. Power means lawful power, or right.

*Id quod nostrum est sine facto nostro ad alium transferri non potest*. That which is ours, cannot be transferred to another without our act. *Dig.* 50. 17. 11.

ID EST. (abbrev. i. e.) Lat. That is. See Calvin's exposition of this phrase in the civil law.

IDEM. Lat. The same. According to Lord Coke, *idem* has two significations, sc. *idem syllabis seu verbis*, (the same in syllables or words,) and *idem re et sensu*, the same in substance and in sense. 10 *Co.* 124 a, *Case of the Mayor and Burgesses of Lynn*.

*Idem agens et patiens esse non potest*. The same person cannot be both agent and pa-

tient. *Jenk. Cent.* 40, case 76. A man cannot, as a judge, administer justice to himself as a party. *Id.*

*Idem est facere, et nolle prohibere cum possis*. It is the same thing to do a thing, and to refuse to prohibit it when in your power. 3 *Inst.* 158. Not to forbid or prevent a thing when in your power, is the same as to do it yourself. See *Qui non prohibet, &c.*

*Idem est nihil dicere, et insufficienter dicere*. It is the same thing to say nothing, and to say a thing insufficiently. 2 *Inst.* 178. To say a thing in an insufficient manner is the same as not to say it at all. Applied to the plea of a prisoner. *Id.*

*Idem est non esse, et non apparere*. It is the same thing not to be, as not to appear. *Jenk. Cent.* 207. Not to appear is the same thing as not to be. *Broom's Max.* 72, [123.] See *Apparens*.

IDEM. L. Lat. In old practice. The said, or aforesaid; said, aforesaid. Distinguished from *prædictus*, in old entries, though having the same general signification. *Towns. Pl.* 15, 16. *Idem semper proximo antecedenti refertur*. *Idem* always refers to the next antecedent. *Co. Litt.* 20 b, 385 b.

IDEM SONANS. L. Lat. Sounding the same or alike; having the same sound; (L. Fr. *tout un sound*.) A term applied to names which are substantially the same, though slightly varied in the spelling, as Lawrence and Lawrance, and the like. 1 *Crompt. & M.* 806. 3 *Chitt. Gen. Pr.* 171.

IDEMPITAS. L. Lat. [from *idem*, the same.] In old English practice. Sameness; identity. *Reg. Orig.* 104, *et seq.* Another form of *identitas*, (q. v.)

IDENTIFICATION. [from Lat. *idem*, the same, and *facere*, to make.] In the law of evidence. Proof of identity; a *making out to be the same*; the act or process of proving a subject, person or thing, before a court, to be *the same* as it is claimed or charged to be. *Burr. Circ. Evid.* 631. The act or process of proving a person charged with a crime to be *the same person* who actually committed it. *Id.* 635, *et seq.* The act or process of proving an article found in the possession of a person charged with larceny or robbery, to be *the same* with the article charged to have been stolen. *Id.* 651, *et seq.*

IDENTITAS. L. Lat. Identity; sameness. See *Ex multitudine signorum, &c.*

IDENTITY. [L. Lat. *identitas, idemp-*

*titas*, q. v.] In the law of evidence. Sameness; the fact that a subject, person or thing before a court, is *the same* as it is represented, claimed or charged to be. See *Burr. Circ. Evid.* 382, 453, 631, 644.

IDEO. Lat. Therefore. *Calv. Lex.*

IDEO QUÆRE. L. Lat. Therefore inquire. See *Quære*.

IDEO CONSIDERATUM EST. L. Lat. Therefore it is considered. The initial words of the ancient entry of judgment on the record in an action at law, and by which that part of the record is still sometimes called, in modern practice. *Mem. in Scacc.* 20 Edw. I. *Yearb. T.* 1 Edw. II. 11. *Cro. Jac.* 36. 3 *Bl. Com.* 396. 1 *Burr. Pr.* 254. See *Consideratum est*.

IDEOT. An old form of *idiot*, (q. v.)

IDEOTA. An old form of *idiot*, (q. v.) *Non ideota à nativitate, sed per infortunium. Mem. in Scacc.* P. 20 Edw. I.

IDES. [Lat. *idus*, from O. Lat. *iduate*, to divide, because they divided the month.] One of the three divisions of the ancient Roman month. In the months of March, May, July and October, the ides fell on the 15th; and in the other months, on the 13th, *Adam's Rom. Antiq.* 355, 357.

IDIOCHIRA. Græco-Lat. [Gr. *ιδιοχειρα*, from *ιδιος*, private, and *χειρ*, hand.] In the civil law. An instrument privately executed, as distinguished from such as were executed before a public officer. *Cod.* 8. 18. 11. *Calv. Lex.*

IDIOCY. In medical jurisprudence. That condition of mind in which the reflective, and all or a part of the affective powers, are either entirely wanting, or are manifested to the slightest possible extent. *Ray on Insanity*, § 51. *Wharton & Stille's Med. Jur.* § 222. See *Idiot*.

IDIOT, *Ideot*. [Lat. *idiot*, *ideota*; from Gr. *ιδιώτης*, a private individual. See *infra*.] A fool, (*fatuus*,) or person of no understanding, of which two kinds are mentioned in the books; an idiot from birth, (*idiot* à *nativitate*,) otherwise called a natural fool; and an idiot from accident or sickness, (*idiot* à *casu et infirmitate*,) See *Idiota*. But these distinctions are not always observed; thus an idiot is expressly defined to be "he that is a *natural fool* from his birth, and knows not how to count twenty pence, or name his father or mother, nor tell his own age, or such like easy and common matters, so that it appears he hath no manner of understanding, reason or government of himself." *Termes de la Ley*.

See *Natural fool*. The terms *idiot* and *natural fool* are treated as synonymous by Coke and Blackstone, and Lord Hardwicke has observed that "an idiot was such as was so à *nativitate*." *Co. Litt.* 247 a. 4 *Co.* 124 b, 128 a, *Beverley's case*. 1 *Bl. Com.* 302, 303. 2 *Vesey*, 407. See 1 *Collinson on Idiots*, 1. *Stock on Non Compotes Mentis*, Introd. See *Idiocy*.

The original form of this word is the Greek *ιδιώτης*, a private individual, one in private life, from *ιδιος*, one's own, peculiar, by one's self, (Lat. *suus*, *sui generis*.) Hence the Gr. *ιδιωτεύειν*, to lead a private life. This original sense was retained in the Latin form *idiot*, which is used by Seneca and other writers to denote a private person. But another meaning was more commonly given to the latter word, viz. an illiterate or ignorant person, one deficient in learning or understanding, and from this has been derived the intenser sense of the word *idiot* in modern law.

IDIOTA. Lat. [from Gr. *ιδιώτης*, a private individual.] In the civil law. An unlearned, illiterate or simple person. *Calv. Lex.* A private man; one not in office. *Id.*

In the common law. An idiot, or fool. *Reg. Orig.* 266, 267. *Idiota à nativitate*; an idiot from birth, or natural fool. *Id. ibid.* 1 *Bl. Com.* 303. *Purus idiot*; an absolute fool.

IDONEARE. L. Lat. [from *idoneus*, q. v.] In old European law. To make or prove one's self innocent, (*idoneum se facere—insontem se reddere*;) to clear one's self according to law, from an accusation of guilt. *LL. Longob.* lib. 2, tit. 35, l. 4. *Capitul.* lib. 3, tit. 89. *Spelman*.

IDONEUS. Lat. In the civil and common law. Sufficient; competent; fit or proper; responsible; unimpeachable. *Idoneus homo*; a responsible or solvent person. *Calv. Lex.* A competent or credible person; a good and lawful man. *Spelman*. A person apt and fit to execute an office. 8 *Co.* 41 b, *Griesley's case*. "He is said in law to be *idoneus* who has these three things, honesty, knowledge and ability." *Id. ibid.* *Idonea persona*; a fit person or parson. 6 *Co.* 49 b, *Boswell's case*. "Which epithet *idonea* includes ability in learning and doctrine, honesty in conversation, and diligence in his function." *Id. ibid.*

Sufficient; adequate; satisfactory. *Idonea cautio*; sufficient security. *Reg. Orig.*

66, 67. *T. Raym.* 225. *Idonea paries*; a sufficient wall. *Calv. Lex.*

IDONIETAS. L. Lat. [from *idoneus*, q. v.] In old English law. Ability or fitness (of a parson.) *Artic. Cleri*, c. 13.

IGALE. L. Fr. Equal. *Kelham*. Another form of *egale*.

IGLISE. L. Fr. A church. *Kelham*. Another form of *eglise*.

IF. [Lat. *si*.] A word expressive of condition in deeds and other instruments. See *Condition*, *Si*.

"If," in a will, is sometimes construed "when," in order to advance the apparent intention of the testator. 3 *Russ. Chan. Cas.* 365. 2 *Williams on Exec.* 932.

IGNITEGIUM. L. Lat. [from *ignis*, fire, and *tegere*, to cover.] In old English law. The curfew, or evening bell. *Cowell*. See *Curfew*.

IGNORAMUS. L. Lat. (We are ignorant, or, we know nothing of it.) In practice. A word formerly endorsed by a grand jury on the back of a bill of indictment, in cases where, after hearing the evidence, they thought the accusation groundless. 9 *Co.* 55 b, *The Poulterers' case*. *Cro. Jac.* 7. *Latch*, 79. *Yelv.* 99. The words used for the same purpose, in modern practice, are "not a true bill," or "not found." 4 *Bl. Com.* 305. 4 *Steph.* 373. The term "*ignore*," however, is still applied in the books, to this mode of disposing of an indictment; thus, when a jury throw out a bill, they are said to *ignore* it.

IGNORANCE. See *Ignorantia*.

IGNORANTIA. Lat. Ignorance; want of knowledge. Distinguished from mistake, (error,) or wrong conception. 1 *Mackeld. Civ. Law*, 163, § 165. *Dig.* 22. 6. Divided in the civil law, into *ignorantia facti* (ignorance of fact) and *ignorantia juris* (ignorance of law.) *Dig.* 22. 6. 1, pr. Lord Coke adopts this division; adding that the former is twofold, *lectionis et lingue*, (ignorance of reading and ignorance of language.) 2 *Co.* 3 b, *Manser's case*. See *Cod.* 1. 18.

*Ignorantia facti excusat*. Ignorance of fact excuses, or is a ground of relief.\* 2 *Co.* 3 b. *Broom's Max.* [190.] Acts done and contracts made, under mistake or ignorance of a material fact, are voidable and relievable in law and equity. 2 *Kent's Com.* 491, and notes. 24 *Mississippi R.* 44.

*Ignorantia juris non excusat*. Igno-

rance of the law is no excuse. 1 *Co.* 177 b, *Mildmay's case*. 2 *Co.* 3 b, *Manser's case*. *Ignorantia juris quod quisque tenetur scire, neminem excusat*. Ignorance of the [or a] law, which every one is bound to know, excuses no man. A mistake in point of law is, in criminal cases, no sort of defence. 4 *Bl. Com.* 27. 4 *Steph. Com.* 81. *Broom's Max.* 122, [190.] 7 *Carr. & P.* 456. And in civil cases, ignorance of the law, with a full knowledge of the facts, furnishes no ground either in law or equity, to rescind agreements, or reclaim money paid, or set aside solemn acts of the parties. 2 *Kent's Com.* 491, and note. A maxim said by Mr. Justice Story to be "laid up among the earliest rudiments of the law." 2 *Story's R.* 353. See 1 *Story's Eq. Jur.* § 116. 23 *Penn. St. R.* 509. Another form of this maxim is, *Ignorantia legis neminem excusat*. Ignorance of the law excuses no man. 1 *Story's Eq. Jur.* § 111. The substance of both the preceding maxims is embraced in the rule laid down by Paulus, in his book *De juris et facti ignorantia*,—*juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere*; ignorance of law prejudices a person, but ignorance of fact does not. See *Dig.* 22. 6. 9, pr.

*Ignorantia judicis [est] calamitas innocentis*. The ignorance of the judge is the misfortune of the innocent party. 2 *Inst.* 591.

IGNORARE. Lat. In old practice. To be ignorant; to ignore, or throw out a bill of indictment. See *Ignoramus*.

IGNORARI. L. Lat. To be unknown. *Ignoratis terminis artis, ignoratur et ars*. Where the terms of an art are unknown, the art itself is unknown also. *Co. Litt.* 2 a.

IGNORE. [from Lat. *ignorare*, q. v.] In practice. To know nothing; to be ignorant; to reject on the ground of ignorance, in consequence of the want of evidence. See *Ignoramus*.

*Ignoscitur ei qui sanguinem suum qualiter redemptum voluit*. The law holds him excused from obligation, who chose to redeem his blood (or life) upon any terms. Whatever a man may do under the fear of losing his life or limbs, will not be held binding upon him in law. 1 *Bl. Com.* 131.

IKENILD STREET. One of the four great Roman roads in Britain; supposed to be so called from the *Iceni*, who inhabited that part of England now known as

Suffolk, Norfolk, Cambridgeshire and Huntingdonshire, through which it passed. *Camd. Brit.* fol. 343. *LL. Edw. Conf.* c. 12. *Cowell. Spelman.*

IL. L. Fr. It. *Il corient*; it behooveth. *Litt.* sect. 61. *Il est dit*; it is said. A common expression in Littleton. *Litt.* sect. 601. Said by Lord Coke to be as good as a *concessum*, (q. v.) *Co. Litt.* 328 b. *Il est comunement dit*; it is commonly said. *Litt.* sect. 288. That is, it is the common opinion. *Co. Litt.* 186 a.

He. *Il monstra*; he showeth. *Litt.* sect. 365. In the Civil Code of Louisiana, *il* is declared to be applicable both to males and females. Art. 3522.

ILL. In old pleading. Bad; defective in law; null; naught; the opposite of good or valid. "An *ill teste*." 6 *Mod.* 285. "An *ill plea*." 11 *Id.* 258. "An *ill president*." 3 *Leon.* 28. "The plea is *ill*; the plea is naught." 2 *Mod.* 68. 5 *Id.* 168. "It [the declaration] is *ill*, and shall not be aided." *Com.* 44. "Both the return and the writ of *mandamus* are very *ill*." 5 *Mod.* 421. "*Et per curiam, ill*." 1 *Show.* 366.

ILLA. Lat. [plur. of *ille*, that.] Those. See this word construed in 2 *Co.* 33 a, *Dodington's case.* *Wingate's Max.* 13, pl. 11.

ILLEGITIMATE. Not legitimate; born out of lawful wedlock. See 2 *Kent's Com.* 208.

ILLEVIABLE. Not leviable; that cannot or ought not to be levied. *Cowell.*

ILLICENCIATUS. L. Lat. In old English law. Without license. *Fleta*, lib. 3, c. 5, § 12.

ILLICIT. [from Lat. *illicitus*, from *in*, and *licitus*, allowed, from *licere*, to permit.] Not permitted or allowed; prohibited; unlawful, as, an *illicit* trade; *illicit* intercourse.

ILLICKES, *Illeques*, *Illec*, *Alec*. L. Fr. There. *Britt.* c. 21. *Kelham.*

ILLITERATE. [Lat. *illiteratus*, from *in* and *litteratus*, from *littera*, a letter.] Unlettered, ignorant of letters or books; untaught; unlearned; as a person who cannot read or write.

ILLONQUES, *Illoeges*, *Illokes*, *Iluccke*, L. Fr. There. *Britt.* c. 22. *Kelham.*

ILLUD. Lat. That. *Illud quod alias licitum non est, necessitas facit licitum.* That which otherwise is not lawful, necessity makes lawful. *Bract.* fol. 247. 10

*Co.* 61 a, *Bishop of Salisbury's case.* See *Necessitas.*

ILLUSORY. [from Lat. *illudere*, to mock.] Deceiving by false appearances; nominal, as distinguished from substantial. An illusory appointment is one which is merely nominal; and on that account is fraudulent and void in equity. See 4 *Kent's Com.* 342, 343. By the English statute of Will. IV. c. 46, it is declared that no appointment shall be impeached in equity, on the ground that it is unsubstantial, illusory, or nominal. See 5 *Florida R.* 52.

IMBARGO. An old form of *embargo*, (q. v.) *Stat.* 18 *Car.* II. c. 5.

IMBECILITY. [Lat. *imbecilitas*.] In medical jurisprudence. Weakness or feebleness of mind; absence of natural or ordinary vigor. See *Whart. & Stille's Med. Jur.* §§ 229—233.

IMBEZZLE, *Imbesil*. Old forms of *embezzle*. *Stat.* 14 *Car.* II. c. 31. *Cowell.* See *Embezzle*. *Imbessel*. *Brownl. & Gold.* 21.

IMBLADARE. L. Lat. [L. Fr. *emblem*, *emblaver*.] In old English law. To plant or sow grain. *Bract.* fol. 176 b.

IMBRACER, *Imbracery*. Old forms of *embracer* and *embracery*, (qq. v.)

IMBRACIATOR. L. Lat. In old English law. An embracer. *Reg. Orig.* 189 a. See *Embracer*.

IMBREVIARE. *Imbreviare*. L. Lat. [L. Fr. *embrever*.] In old English law. To commit to writing briefly, (*scripto breviter mandare*;) to put or copy into a schedule, (*in schedulam quod breve vocant, rem conscribere*;) to enrol. *Spelman.* *Magna Charta*, c. 18. *Et nomina eorum xii statim imbrevari faciant in quadam schedula*; and they shall cause the names of those twelve to be immediately written in a certain schedule. *Bract.* fol. 116. See *Fleta*, lib. 4, c. 5, § 10. To make an inventory; to inventory. *Bract.* fol. 60 b. Sometimes translated *imbreviate*.

IMBROCUS, *Brocus*. L. Lat. In old records. A brook, or water-passage. *Cowell.*

IMMATERIAL. Not material; not essential or important.

Not formally proper. See *Immaterial issue*.

IMMATERIAL ISSUE. In pleading. An issue taken on an immaterial point, that is, a point not proper to decide the action. *Steph. Pl.* 99, 130. 2 *Tidd's Pr.* 921.

**IMMEDIATE.** Lat. In old English law. Immediately; directly; without any thing intermediate. *Fleta*, lib. 3, c. 10, § 1.

**IMMEDIATELY.** [Lat. *statim*; Fr. *maintenant*.] This word is often understood, not literally, of a time succeeding without any interim or actual interval, but of an effectual and lawful time, allowing "all the adjuncts and accomplements," as Lord Bacon terms them, necessary to give an act full legal effect, to be performed. Argument in the Case of Revocation of Usus; *Works*, iv. 253. See *Statim*.

**IMMEMORIAL.** Beyond time of memory. See *Time immemorial*.

**IMMISCERE.** Lat. In the civil law. To mix or mingle with; to meddle with; to join with. *Calv. Lex. Culpa est immiscere se rei ad se non pertinenti*. It is fault or blameable conduct to meddle with a thing that does not belong or concern one's self. *Dig.* 1. 17. 36.

To take or enter upon an inheritance. A term applied to those heirs called *hæredes sui*, corresponding with *adire*, which was applied to *hæredes extranei*. *Calv. Lex.*

**IMMISSIO.** L. Lat. [from *immittere*, q. v.] In old English law. A putting in; introduction. *Fleta*, lib. 3, c. 15, § 11.

**IMMITTERE.** Lat. In the civil law. To put or let into, as a beam into a wall. *Calv. Lex. Dig.* 50. 17. 242. 1.

In old English law. To put cattle on a common. *Fleta*, lib. 4, c. 20, § 7.

**IMMOBILIS.** Lat. Immoveable. *Immobilia*, or *res immobiles*; immoveable things, such as lands and buildings. 1 *Mackeld. Civ. Law*, 152, § 147. 2 *Kent's Com.* 347. *Immobilia situm [sequuntur]*. Immoveable things follow their site or position; are governed by the law of the place where they are fixed. 2 *Kent's Com.* 67.

**IMMOVEABLES.** See *Immobilis*.

**IMMUNITY.** [Lat. *immunitas*.] Privilege; exemption from some common burden. See *Dig.* 50. 6. Derived from *munus*, in the sense of a burden, (*onus*.) *Dig.* 50. 16. 18.

**IMPAIR.** To weaken; to affect injuriously; to diminish or take from.

**"IMPAIRING THE OBLIGATION OF CONTRACTS."** For the meaning of this phrase in the Constitution of the United States, see *Story on the Const.* b. 3, ch. 34, § 1374, *et seq.* 1 *Kent's Com.* 413—422.

**IMPALARE.** L. Lat. In old European law. To impale; to kill or wound by falling upon a paling. *L. Burgund.* tit. 23, § 2. *L. Ripuar.* tit. 70, § 3. *LL. Longob.* lib. 1, tit. 19, l. 10. *Spelman*.

**IMPANEL.** [L. Lat. *impanulare*, *impannellare*.] In practice. To enter the names of jurors on a *panel*, which, in English practice, is an oblong piece of parchment annexed by the sheriff to the writ of *venire*, and returned with it. 3 *Steph. Com.* 590. 2 *Tidd's Pract.* 785—787. See *Panel*.

In American practice, the term is applied not only to the general list of jurors returned by the sheriff, but sometimes also to the list of jurors drawn by the clerk for the trial of a particular cause.

*Empanel* is used by Cowell and Blount.

*Pannell* is used in the laws of the Colony of New-Plymouth. Nov. 15, 1636.

**IMPANULARE.** L. Lat. In old records. To impanel. *Paroch. Antiq.* 657. *Cowell*.

**IMPARCARE.** L. Lat. [from *in*, *in*, and *parcus*, a pound, or enclosed place.] In old English law. To impound. *Reg. Orig.* 92 b.

To shut up, or confine in prison. *Inducti sunt in carcerem et imparcati*; they were carried to prison and shut up. *Bract.* fol. 124.

**IMPARL, Emparl.** [from Fr. *enparler*, to speak together.] In practice. Literally, to *speak with* the plaintiff, which is supposed to have originally been its actual meaning. See *Imparlance*. To have time before pleading; to have time to plead. "To crave leave to *imparl*," in judgment records, is to ask for a continuance. *Kitch.* fol. 200. Anciently the parties literally went out of court to *imparl*. *Et puis ils issent d'emparler et reviendront, et Parn. dist que, &c.*; and afterwards they went out to *imparl* and returned, and Parn. said that, &c. *Yearb.* P. 5 Edw. III. 18. When jurors went aside or retired to deliberate on their verdict, they were anciently said to *imparl* (*enparler*), or talk together. See *Enparler*.

**IMPARLANCE, Emparlance.** [from *imparl*, (q. v.) L. Lat. *interlocutio*, *interloquela*, *licentia loquendi*.] In practice. Time to plead in actions at law; literally, time to *talk with* the plaintiff. 1 *Tidd's Pr.* 462. 3 *Bl. Com.* 299.

A continuance on the judgment record,

between the declaration and plea. 1 *Tidd's Pr.* 678.

\* \* Formerly an imparlance was asked for, by actual motion to the court; its original object being, as is supposed, to obtain time to *speach* with the plaintiff in order to effect, if possible, an amicable arrangement of the suit. 3 *Bl. Com.* 299. *Gilb. C. Pleas*, 42. The actual object of an imparlance, however, has long been merely the obtaining of further time to *plead*. Imparlanes in personal actions have been recently abolished by statute 2 Will. IV. c. 39. 3 *Chitt. Gen. Pr.* 700.

In the sense of time to *plead*, imparlanes have not been recognized in American practice; time, when necessary, being usually obtained in another way. See *Time to plead*. But as *continuances*, they have been retained in judgment records, and serve conveniently to connect the proceedings between declaration and plea, where those pleadings do not take place in the same term. 1 *Burr. Pr.* 265. The continuance by imparlance has been expressly abolished in English practice. *Reg. Gen. Hil. T.* 4 Wm. IV. reg. 2. See *Continuance*.

IMPARSONEE. L. Fr. [L. Lat. *impersonatus*.] In ecclesiastical law. One who is inducted and in possession of a benefice. Parson imparsonnee, (*persona impersonata*.) *Cowell. Dyer*, 40.

IMPEACH. [L. Fr. *empescher*; L. Lat. *empetere*, *impescare*, *impechiare*.] To accuse or challenge; to call to account; to make or hold liable; to sue. See *Impeachment*. To exhibit articles of accusation against a public officer before a competent tribunal.

IMPEACH. In the law of evidence. To call in question the veracity of a witness, by means of evidence adduced for that purpose.

IMPEACHMENT OF WASTE. [L. Fr. *empeschement de wast*; L. Lat. *impetio vasti*.] Liability for waste; liability to be proceeded against or sued for committing waste upon lands or tenements. All tenants for life, or any less estate, are punishable or liable to be impeached for waste, both voluntary and permissive, unless their leases be made as they sometimes are, without impeachment of waste, (*absque impetitione vasti*.) 2 *Bl. Com.* 283. See *Absque impetitione vasti*, *Without impeachment of waste*.

IMPECHIARE. L. Lat. [from Fr. *em-*

*pescher*.] In old records. To impeach or accuse. *Cowell*.

IMPEDIENS. L. Lat. [from *impedire*, q. v.] In old practice. One who hinders; an impedient. The defendant or deforciant in a fine was sometimes so called. *Cowell. Blount*.

IMPEDIRE. Lat. [from *in*, *in*, and *pes*, foot.] To impede, prevent or embarrass motion, as by something about the feet; to obstruct or hinder generally; to disturb.\* Bracton gives the etymology of this word, but applies it in a peculiar manner. *Impedire est ponere pedem in jus alienum quod quis habet in jure presentandi, cum quasi seysina et jure qualiquali, &c.* *Impedire* is to put the foot (*pedem*) into another's right to a presentation, with a sort of seisin, and color of right. *Bract. fol.* 247. See *Fleta*, lib. 5, c. 16, § 2. See *Impedit*.

IMPEDIT. Lat. [from *impedire*, q. v.] He hinders. See *Impedire*, *Quare impedit*. *Impedit componitur de in et pes pedis, et unde revera ille impedit qui nititur intus pedem ponere in jus alienum, ubi nullum jus ei competit.* *Impedit* is compounded of *in*, and *pes*, *pedis*, whence he truly *impedes* who endeavors to put his foot into another's right, where no right belongs to him. *Bract. fol.* 247.

IMPEDITOR. L. Lat. [from *impedire*, q. v.] In old English law. A disturber in the action of *quare impedit*. *Stat. Marl.* c. 12.

IMPENSÆ. Lat. [from *impendere*, to lay out, or bestow.] In the civil law. Expenses; outlays. 1 *Mackeld. Civ. Law*, 157, § 155. *Calv. Lex*. Divided into necessary, (*necessariæ*), useful, (*utiles*), and tasteful or ornamental (*voluptuariæ*.) *Dig.* 50. 16. 79. See *Id.* 25. 1.

IMPERATOR. Lat. [from *imperare*, to command.] Emperor; the title of the Roman emperors. Justinian, in the preface to the Institutes, styles himself "Imperator, Cæsar Flavius Justinianus," &c. *Inst. procem.* *Imperator solus et conditor et interpretis legis existimatur*; the emperor alone is considered the maker and interpreter of the law. *Cod.* 1. 14. 12. And see *Tayl. Civ. Law*, 30.

A title given to the kings of England in charters before the conquest. *Selden's Tit. of Hon.* I. 2. 1 *Bl. Com.* 242.

"IMPERFECT," applied to a testamentary paper, technically means that the document is, upon the face of it, manifestly

in progress only, and unfinished and incomplete as to the body of the instrument. 2 *Addams' R.* 357. 1 *Williams on Exec.* 61.

**IMPERITIA.** Lat. [from *in*, priv. and *peritia*, skill.] Want of skill; unskilfulness. *Imperitia culpæ adnumeratur.* Want of skill is reckoned as *culpa*; that is, as blameable conduct or neglect. *Dig.* 50. 17. 132. Thus, if a surgeon perform an operation unskilfully, or a physician carelessly administers medicine, so that the death of the patient follows, they are respectively liable for the result. *Inst.* 4. 3. 7. And so, in any art or trade, if a man performs his work unskilfully, he becomes responsible in damages. 2 *Kent's Com.* 588. *Story on Bailm.* §§ 390 a, 428, 431. See *Culpa, Peritia, Spondet peritiam artis.*

*Imperitia est maxima mechanicorum pæna.* Unskilfulness is the greatest punishment of mechanics; [that is, from its effect in making them liable to those by whom they are employed.] 11 *Co.* 54 a, *Ipswich Tailors' case.* The word *pæna* in some translations is erroneously rendered *fault*.

**IMPERPETUUM.** L. Lat. In old English law. Forever. *Fleta*, lib. 2, c. 54, § 26. *Towns. Pl.* 19.

**IMPERSONALITAS.** Lat. Impersonality. A mode of expression where no reference is made to any person, such as the expression *ut dicitur*, (as is said.) *Co. Litt.* 352 b. *Impersonalitas non concludit nec ligat.* Impersonality neither concludes nor binds. *Id. ibid.*

**IMPERIUM.** Lat. In the civil law. Power or command; military power or command, (*potestas armata*;) authority and power of a superior kind; the power of punishing, (*gladii potestas*.) *Calv. Lex. Heinec. Elem. Jur. Civ.* lib. 4, tit. 17, §§ 1318—1322. This was called *merum imperium*, as distinguished from *mixtum*. *Dig.* 2. 1. 3.

**IMPERTINENCE.** [from Lat. *in*, priv. and *pertinere*, to belong to.] In equity pleading. The quality of *not belonging* to a thing, or matter in question; superfluousness; irrelevance. The introduction of any matters into a bill, answer or other pleading or proceeding in a suit, which are not properly before the court for decision, at any particular stage of the suit. *Story's Eq. Pl.* § 266. 1 *Daniell's Chanc. Pr.* (Perkins' ed.) 399, and notes. Impertinence is the same description of fault in pleadings in equity, which, in those at

common law, is denominated *surplusage*. *Id.* 400. Sometimes distinguished from *prolixity*. *Id. ibid.*

**IMPERTINENT.** In equity pleading. That which does not belong to a pleading, interrogatory or other proceeding; out of place; superfluous; irrelevant. See *Impertinence*.

**IMPESCARE.** L. Lat. [from L. *Fr. empescher*.] In old records. To impeach or accuse. *Impescatus*; impeached. *Blount*.

**IMPETERE.** L. Lat. [from *in*, against, and *petere*, to demand.] In old English law. To impeach, or accuse. *Impetebatur tunc Guntheramnus de interitu Theodoberti*; Gunthram was then accused of the slaying of Theodobert. *Greg. Turon. Hist.* lib. 5, c. 14. *Spelman*, voc. *Impetitus*.

To call to account, or hold accountable; to sue. 2 *Bl. Com.* 283. See *Impetitia, Impeachment*.

**IMPETITIO.** L. Lat. [from *impetere*, q. v.] In old English law. An accusation, charge or impeachment. *Spelman*.

A calling to account, or holding accountable or liable; a prosecuting for some alleged damage. *Impetitia vasti*; impeachment of waste. *Id.* 2 *Bl. Com.* 283.

A demand. 11 *Co.* 82 b, *Bowles' case*.

A suit. *Glanv.* lib. 13, c. 17. A judicial claim or interruption by suit in law. *Bacon's Works*, iv. 226.

\* \* In *Leake v. Eyre*, the court held that *impetitia* was a corruption of *impeditio*, and imported the same thing with that word, or *impedimentum*, viz. a hindrance. *Cro. Jac.* 216. And see *Cowell*, voc. *Impeachment of waste*. But Lord Coke has very satisfactorily shown it to be a genuine word. 11 *Co.* 82 b. And Lord Bacon has more distinctly said that, "It is an ignorant mistaking of any man to take impeachment for *impedimentum*, and not for *impetitia*; for it is true that *impedimentum* doth extend to all hindrances or disturbances, or interruptions, as well *in pais* as judicial. But *impetitia* is merely a judicial claim or interruption by suit in law, and upon the matter, all one with *implacitatio*. Wherein we may first take light of the derivation of *impetitia*, which is a compound of the preposition *in*, and the verb *peto*, whereof the verb *peto* itself doth signify a demand, but yet properly such a demand as is not extra-judicial; for the words *petit judicium*, *petit auditum brevis*, &c. are words of acts judicial. But the preposition *in* enforceth it more, which

signifies against;—so it is such a demand only where there is a party raised to demand against, that is, an adversary, which must be in a suit at law, and so it is used in records of law." Bacon's Arg. Case of Impeachment of Waste; *Works*, iv. 226, 227.

**IMPETITUS.** L. Lat. [from *impetere*, q. v.] In old English law. Impeached, accused or charged with an offence; an accused person. *LL. Hen. I. c. 6. Spelman.*

**IMPETRARE.** Lat. In old English practice. To obtain by request, as a writ or privilege. *Bract.* fol. 57, 172 b. This application of the word seems to be derived from the civil law. *Calv. Lex.*

**IMPETRATIO.** Lat. [from *impetrare*, q. v.] An obtaining by request, or prayer. Applied, in old practice, to writs and liberties. *Bract.* fol. 57, 172 b. *Fleta*, lib. 4, c. 5, § 1. *Impetration* is used in old English statutes, for the pre-obtaining of benefices and church offices from the court of Rome. *Stat. 25 Edw. III. Stat. 38 Edw. III. st. 2, c. 1. Cowell.*

**IMPIERMENT.** L. Fr. Impairing or prejudicing. *Stat. 23 Hen. VIII. c. 9. Blount. Kelham.* See *Empire.*

**IMIGNORATA.** L. Lat. Pledged; given in pledge, (*pignori data*;) mortgaged. A term applied in Bracton to land. *Bract.* fol. 20.

**IMPLACITARE.** L. Lat. [from *in*, into, and *placitum*, a plea or suit.] In old English law and practice. To subject to an action, or *placitum*;\* to implead or sue. *In omni casu quo minores infra aetatem implacitare possunt*; in every case in which minors under age may sue. *Stat. Westm. 2, c. 15. Nec implacitabit nec implacitabitur*; shall neither implead nor be impleaded. *Bract.* fol. 86 b. *Unde eum implacitat*; whereof he impleads him. *Fleta*, lib. 2, c. 65, § 12.

**IMPLACITATUS.** L. Lat. [from *implacitare*, q. v.] Impleaded; sued. *Cum aliquis implacitatus coram aliquibus iustitiariis, &c.*; when any one impleaded before any justices, &c. *Stat. Westm. 2, c. 31.* See *Bract.* fol. 102 b. *Fleta*, lib. 2, c. 60, § 22.

**IMPLEAD.** [from L. Fr. *impleder* or *empler*; L. Lat. *implacitare*, q. v.] In practice. To sue, or prosecute by due course of law. *Termes de la Ley.* 3 *Comstock's R.* 195. Still used in records.

**IMPLEADED.** [L. Fr. *implede*; L.

Lat. *implecitatus*.] Sued or prosecuted. Still used in practice, particularly in the titles of causes where there are several defendants.

**IMPLEDER.** L. Fr. To implead. *Implede*; impleaded or sued. *Stat. Glocest. c. 12.* The more usual form was *empler*, (q. v.)

**IMPLEMENT.** [L. Lat. *implementum*, from *implere*, to fill, fulfil or accomplish.] In a general sense, whatever may supply wants. *Webster.* Any thing used for the performance of a work, or the accomplishment of a purpose.\* *Webster* states this to be a word of very extensive signification.

In a stricter sense—a thing or instrument necessary, or ordinarily used for the performance of work or labor, or the prosecution of any game or sport; a tool or utensil.\* More commonly used in the plural (implements,) and in this sense confined to inanimate things, as *implements* of trade, of agriculture, &c. In *Coolidge v. Choate et al.* it was said that the word *implements* had the same meaning as *apparatus*, and did not include animals or beings having life. 11 *Metcalf's R.* 79.

**IMPLICATION.** Intendment or inference, as distinguished from the actual expression of a thing in words. By a will, an estate may pass by mere *implication*, without any express words to direct its course. 2 *Bl. Com.* 381. 4 *Kent's Com.* 541, and note. In general, where any implications are allowed, they must be such as are necessary, (or at least highly probable,) and not merely possible implications. 2 *Bl. Com.* 382. In construing a will, conjecture must not be taken for implication, but necessary implication means not natural necessity, but so strong a probability of intention, that an intention contrary to that which is imputed to the testator cannot be supposed. Lord Eldon, C. 1 *Ves. & B.* 466. See 3 *Paige's R.* 1. 1 *Jarman on Wills*, 465, (431, Perkins' ed.) *et seq.*

**IMPLIED ABROGATION.** Abrogation by implication; as where a law contains provisions contrary to those of a former law, without expressly abrogating such law; or where the reason of a law, or object for which it was passed, has ceased to exist. See *Cessante ratione legis, cessat et ipsa lex.* The implied repeal of statutes is not favored. 15 *Georgia R.* 361.

**IMPLIED ASSUMPSIT.** An undertaking or promise not formally made, but presumed or implied from the conduct of a party. See *Assumpsit.*

**IMPLIED CONDITION.** See *Condition implied*.

**IMPLIED CONSIDERATION.** A consideration implied or presumed by law, as distinguished from an *express* consideration, (q. v.)

**IMPLIED CONTRACT.** A contract implied by reason and justice, and which therefore the law presumes that every man undertakes to perform. As if I employ a person to do any business for me, or perform any work, the law implies that I undertook or contracted to pay him as much as his labor deserves. 2 *Bl. Com.* 443. 3 *Id.* 158—165. 2 *Steph. Com.* 110, 111. Sometimes called an implied *assumpsit*. 3 *Bl. Com. ub. sup.*

**IMPLIED COVENANT.** A covenant implied or inferred from certain words in deeds, leases, &c.; as "give," "grant, bargain and sell," "demise," and the like. 4 *Kent's Com.* 473, 474. 2 *Hilliard's Real Prop.* 365, 366.

**IMPLIED MALICE.** Malice presumed or implied by law from the acts of a party and the circumstances of a case.\* Malice inferred from any deliberate cruel act committed by one person against another, however sudden. *Wharton on Homicide*, 38. What is called *general* malice is often thus inferred. *Id. ibid.*

**IMPLIED TRUST.** A trust raised or created by implication of law; a trust implied or presumed from circumstances.\* 2 *Crabb's Real Prop.* 571, §1796. 1 *Steph. Com.* 346. A more general term than "*resulting*," or "*constructive*" trust. 2 *Crabb's R. P. ub. sup.* See 2 *Story's Eq. Jur.* §1195, *et seq.* 1 *Hilliard's Real Prop.* 305.

**IMPLIED WARRANTY.** A warranty implied by law from circumstances, as distinguished from an express or actual warranty. Thus, if the seller of a chattel have possession of it and sell it as his own, and not as agent for another, and for a fair price, he is understood to *warrant the title*. 2 *Kent's Com.* 478. A warranty of the *quality* of an article sold is also sometimes implied. *Id.* 478—481, and notes. See 1 *Selden's R.* 73.

A warranty implied from an instrument or from particular words in an instrument. Thus, in every policy of insurance there is an *implied* warranty that the ship is seaworthy when the policy attaches. 3 *Kent's Com.* 287. 1 *Phillips on Ins.* 308. So in ancient deeds, the law implied a warranty from the word *dedi*. See *Dedi*.

**IMPONERE.** L. Lat. [from *in*, in or upon, and *ponere*, to put.] In old practice. To put in. *Imposuit commune ballium*; he put in common bail. 1 *Salk.* 8, pl. 19.

To put upon, or impose. See *Impositio*.

To **IMPORT.** [from Lat. *importare*, from *in*, into, and *portare*, to carry or bring.] In a general sense—to bring to, or in; to bring to or into a country. This sense of the word was contended for in the case of the *Ship Adventure and Cargo*, but disallowed by Marshall, C. J. 1 *Brock. R.* 235.

In a stricter sense—to bring goods, chattels or other property into a country from another country; to bring from a foreign port; to bring by sea, or in the way of trade.\* See *Import*.

**IMPORT.** A thing imported; a thing or article brought into a country from another country. More commonly used in the plural. See *Imports*.

**IMPORTATION.** The act of bringing goods and merchandise into a country from a foreign country.

**IMPORTER.** L. Fr. To carry away. *Coupa et importa ses arbres*; cut and carried away his trees. *Yearb. M.* 5 Edw. III. 109. *Arbres coupes et importes*; trees cut and carried away. *Dyer*, 35 b, (Fr. ed.) *Blees imports*; corn carried away. *Id.* 36 b.

**IMPORTS.** Things imported. Marshall, C. J. 12 *Wheaton's R.* 419. Things, commodities or articles of property imported into a country from another country.\* Woodbury, J. (dissenting,) 7 *Howard's R.* 535. See 10 *Richardson's Law R.* 474. "No state shall, &c., lay any imposts or duties on *imports* or exports," &c. *Const. U. S.* Art. 1, Sect. 10. The term is not properly applicable to *persons*, except to that description of persons who are regarded as property, viz. slaves. Taney, C. J. (dissenting,) 7 *Howard's R.* 477. Daniel, J. (dissenting,) *Id.* 505. Woodbury, J. (dissenting,) *Id.* 535.

**IMPORTUNITY.** [Lat. *importunitas*.] Pressing solicitation; urgent request; application for a claim or favor which is urged with troublesome frequency or pertinacity. *Webster*. Importunity is sometimes a ground for setting aside a will. But it must be in such a degree as to take away from the testator free agency; it must be such importunity as he is too weak to resist; such as will render the act no longer the act of the deceased, not the free

act of a capable testator, in order to invalidate the instrument. Sir John Nicholl, 2 *Phillim. R.* 551, 552. 1 *Williams on Excc.* 41.

**IMPOSITIO.** Lat. [from *imponere*, q. v.] In old English law. An imposition, tax or tribute. According to Lord Coke, this word was first used in the 13th year of Edward III. 2 *Inst.* 60, 530. The older expression was *maletot*. *Stat. Confirm. Chartar.* c. 7. 2 *Inst.* 530. See the Great Case of Impositions, 2 *How. St. Trials*, 425.

**IMPOSSIBILIS.** Lat. Impossible. See *Calv. Lex. Impossibilium nulla obligatio est*. There is no obligation of [to do] impossible things. *Dig.* 50. 17. 185. [145.] As if a man promises to give another the moon. *Id. gloss. marg.* See 2 *Story's Eq. Jur.* §§ 1308—1310. *Lex non cogit ad impossibilia*. The law does not compel the performance of impossibilities. *Hob.* 96. *Broom's Max.* [186.] *Ea quæ dari impossibilia sunt, vel quæ in rerum natura non sunt, pro non adjectis habentur*. Those things which are impossible to be given, or which do not exist in the nature of things, are considered as not added [as making no part of the contract.] *Dig.* 50. 17. 135.

**IMPOST.** Fr. and Eng. [from *imposer*, to lay upon; Lat. *impositum*, a thing laid upon.] A custom or tax levied on articles brought into a country. Marshall, C. J. 11 *Wheaton's R.* 419.—A duty on imported goods and merchandise. *Story on the Const.* § 952. *Id.* (Abr.) § 474.

In a large sense, any tax, duty or imposition.\* *Id. ibid.*

**IMPOSTERUM.** L. Lat. Hereafter. *Towns. Pl.* 72.

**IMPOTENCE.** In medical jurisprudence. Want of procreative power in the male. *Whart. & Stille's Med. Jur.* § 419, *et seq.*

**IMPOTENS.** Lat. [from *in*, priv. and *potens*, able.] Unable; impotent; without power or ability. *Impotens sui*; having no power of himself, unable to help himself. *Bract.* fol. 15. *Fleta*, lib. 3, c. 7, § 1.

**IMPOTENTIA.** Lat. [from *impotens*, q. v.] Inability; impossibility. *Impotentia excusat legem*. Inability or impossibility excuses law. *Co. Litt.* 29 a. 10 *Co.* 139, *Keighley's case*. 2 *Bl. Com.* 127. *Broom's Max.* 116, [182.] The impossibility of a thing dispenses, in certain cases, with a requirement of law. See *Lex non cogit ad impossibilia*. Where the perform-

ance of the condition of a bond or recognizance is rendered impossible by the act of God, or of the law, or of the obligee, the default to comply with it is excused. 3 *Hill's (N. Y.) R.* 570.

**IMPOUND.** To put in a pound; to place cattle, goods or chattels taken under a distress, in a lawful pound. *Holthouse*. See *Pound*.

**IMPRESSOR.** [L. Lat. from *imprimere*, (q. v.) L. Fr. *imprimeur*.] In old English law. A printer. 1 *W. Bl.* 116.

**IMPRIMATUR.** Lat. [from *imprimere*, q. v.] (Let it be printed.) A license to print a book; so termed from the emphatic Latin word formerly used to express it. *Imprimaturs* were first introduced by the Acts of Uniformity. The first printers in England exercised the art without any license for that purpose. Yorke, Sol. Gen. arg. 1 *W. Bl.* 114.

**IMPRIMERE.** Lat. To press upon; to impress or press; to imprint or print.

**IMPRIMERIE, Imprimery.** In old English law. A print; an impression. *Cowell*.

The art of printing. *Id.*

A printing house or office. *Id. Stat.* 14 *Car. II.* c. 33.

**IMPRIMIS, (properly INPRIMIS, IN PRIMIS.)** Lat. In the first place; first of all. A word formerly very common in the commencement of wills. 2 *Powell on Devises*, 647, 648. Used also in old English statutes and charters, to denote the commencement or first clause. *Mag. Cart.* 9 Hen. III. c. 1. *Artic. Cleri*, c. 1. *Cart.* 31 *Edw. I. apud Molloy de Jur. Mar.* 370—380. Used by *Fleta*, in describing the order of pleading. *Lib.* 2, c. 54. And see *Dyer*, 74.

**IMPRISON.** [L. Fr. *enprisonner*; L. Lat. *imprisonare*, q. v.] To put in a prison; to put in a place of confinement. See *Imprisonare*.

To confine a person, or restrain his liberty, in any way. See *Imprisonment*.

**IMPRISONAMENTUM.** L. Lat. [from *imprisonare*, q. v.] In old English law. Imprisonment. *Est enim imprisonment duplex delictum, injusta captio et injusta detentio, in vinculis vel sine, in cippo vel alia pœna majori vel minori*; for imprisonment is a double offence, an unlawful taking and an unlawful detention, in chains or without, in the stocks or with other greater or less punishment. *Fleta*, lib. 1, c. 42, § 1.

**IMPRISONARE.** L. Lat. [from L. Fr. *emprisonner*, q. v.] In old English law and practice. To imprison. *Quare vi et armis ipsum A. apud N. cepit, imprisonavit et male tractavit, et ipsum sic imprisonatum abinde usque T. duxit, et ipsum ibidem in prisa—detinuit, &c.*; wherefore, with force and arms the said A. at N. he took, imprisoned and ill treated, and him so imprisoned took from thence to T. and him there in prison detained, &c. *Reg. Orig.* 93. See *Fleta*, lib. 1, c. 42.

**IMPRISONMENT.** [L. Lat. *imprisonamentum*.] A putting into prison; confinement of a person in a prison or gaol. See *Imprison, Prison, Prisoner*.

Confinement of the person in any wise. 1 *Bl. Com.* 136.—Any restraint of the person by force. Lord Denman, C. J. 7 *Ad. & Ell. N. S.* 742, 753.—Any restraint upon a man's liberty, wherever may be the place, or whatever may be the manner in which the restraint is effected; as by keeping a man against his will in a private house, or arresting or forcibly detaining him in the open street, or even merely using words which impose a restraint upon his person.\* *Termes de la Ley.* 1 *Bl. Com.* 136. 2 *Inst.* 589. 2 *Kent's Com.* 26. See the late case of *Bird v. Jones* in the Queen's Bench, 7 *Ad. & Ell. N. S.* 742.

**IMPROBARE.** Lat. In the civil law. To disapprove; to disallow; the opposite of *approbare*. *Calv. Lex.*

**IMPROBATION.** [from Lat. *improbare*, to disallow.] In Scotch law. An action brought for the purpose of having some instrument declared false and forged. 1 *Forbes' Inst.* part 4, p. 161. The act by which falsehood and forgery is proved. *Bell's Dict.* The verb *improve* (q. v.) was used in the same sense.

**IMPROPRIATION.** In English ecclesiastical law. A lay appropriation; a benefice in the hands of a lay person, or lay corporation. 1 *Bl. Com.* 386. *Termes de la Ley.* So called, according to Spelman, as being *improperly* in the hands of laymen. *Spelm. Tithes*, c. 29. See *Appropriation*.

**IMPROVE.** In Scotch law. To disprove; to invalidate or impeach; to prove false or forged. 1 *Forbes' Inst.* part 4, p. 162.

**IMPROVEMENT.** In American land law. An act by which a locator or settler expresses his intention to cultivate or clear certain land; an act expressive of the actual possession of land; as by erecting a cabin, planting a corn-field, deadening trees in a

forest; or by merely marking trees, or even by piling up a brush-heap.\*

The cabin, field, deadening or brush-heap itself. Sec 1 *Bibb's (Ky.) R.* 82. 4 *Id.* 578.

**IMPROVEMENT.** In the law of patents. An addition to, or modification of a previous invention or discovery, intended or claimed to increase its utility or value. See 2 *Kent's Com.* 366—372.

**IMPROVEMENTS.** A term used in leases, which, according to Mr. Clitty, is sometimes of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to the amelioration of every description of property, whether real or personal; but when contained in any document, its meaning is generally explained by other words. 1 *Chitt. Gen. Pr.* 174.

As to allowances for improvements to occupants of lands evicted by a better title, see 2 *Kent's Com.* 334—337, and notes.

**IMPRUIARE.** L. Lat. In old records. To improve land. *Impruiamentum*; the improvement so made of it. *Chartul. Abbat. MS.* fol. 50 a. *Cowell.*

**IMPUBES, (pl. IMPUBERES.)** Lat. In the civil law. A minor under the age of puberty; a male under fourteen years of age; a female under twelve. *Calv. Lex.* 1 *Mackeld. Civ. Law*, 136, § 126.

**IMPUNITAS.** Lat. Impunity; exemption from punishment. *Impunitas continuum affectum tribuit delinquenti.* Impunity offers a continual bait to a delinquent. 4 *Co.* 45 a, *Vaux's case*.

*Impunitas semper ad deteriora invitat.* Impunity always invites to greater crimes. 5 *Co.* 109 a, *Foxley's case*.

**IN.** Lat. and Eng. [Fr. *en*.] Sometimes construed to mean "of." Thus, coroner *in* a county was held to mean coroner *of* a county. *Plowd.* 76. 4 *Co.* 41.

**IN.** [L. Fr. *eins*.] A term used, from a very early period, to express the nature of a title, or the mode of acquiring an estate, or the ground upon which a seisin is founded. Thus, in Littleton, a tenant is said to be "*in* by lease of his lessor," (*eins per lease son lessor*;) that is, his title or estate is derived from the lease. *Litt.* sect. 82. So, parceners are said to be "*in* by divers descents." *Id.* sect. 313. So, the issue of a husband is said to be "*in* by descent," (*eins per descent*.) *Id.* sect. 403. So, two sisters are said to be "*in* by divers titles." *Id.* sect. 662. So, in modern law, parties are constantly said in the books to

be "*in* by descent," "*in* by purchase." A dowress is said to be "*in*, of the seisin of her husband." 4 *Kent's Com.* 69. A devisor is said to be "*in*, of his old estate." 1 *Powell on Devises*, (by Jarman,) 621, note. So, a lessor. Shaw, C. J. 1 *Metcalf's R.* 120. See *Eins.* "If he has a freehold, he is *in* as freeholder. If he has a chattel interest, he is *in* as a termor. If he has no title, he is *in* as a trespasser." Lord Mansfield, 1 *Burr.* 114.

\* \* This term seems to be a contraction of "*in seisin*," and to be properly expressive of actual possession of the land. *Fuit in seisina*; he was in seisin. *Fleta*, lib. 4, c. 16, § 4; c. 17, § 10. So, in Britton it is said, "*si le heire soit de pleyne age, et soit eins, et ne voet suffer le seigniour de aver seisine*," &c.; if the heir be of full age, and be *in*, and will not suffer the lord to have seisin, &c. *Britt.* c. 70. It is essentially figurative, and belongs to the same period with the now obsolete phrase "to come to land," implying in its origin an actual entry and possession. Thus, it is said, "when the lord of a villein enters, he comes to the land in respect of a title paramount, that is to say, in respect of villeinage, and the lord by escheat in respect of the seignior which was a title paramount, and both those are *in* merely in the *post*," &c. 3 *Co.* 62 b, *Lincoln College's case*. That it was also expressive of mere seisin, without lawful title, appears clearly from Littleton's expression "*eins encounter la ley*," (in against the law.) *Litt.* sect. 306.

IN ACTION. Attainable or recoverable by action; not in possession. A term applied to property of which a party has not the possession, but only a right to recover it by action. Things in action are rights of personal things, which nevertheless are not in possession. *Hale's Anal.* sect. xxiii. See *Chose in action*.

IN ADVERSUM. L. Lat. Against an adverse, unwilling or resisting party. "A decree not by consent, but *in adversum*." Story J. 3 *Story's R.* 318.

IN ÆQUA MANU. L. Lat. In equal hand. *Fleta*, lib. 3, c. 14, § 2.

IN ÆQUALI JURE. L. Lat. In equal right; on an equal in point of right. "Where parties stand in *æquali jure*, equality of burden becomes equity." 4 *Kent's Com.* 371. In *æquali jure melior est conditio possidentis*. In [a case of] equal right, the condition of the party in possession is the better. *Plowd.* 296. 4

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*Co.* 90, *Drury's case*. The law favoureth possession, where the right is equal. *Finch's Law*, b. 1, ch. 3, n. 36. Where the right is equal, the claim of the party in actual possession shall prevail. *Broom's Max.* 323, [561.] Thus, where a thing is pledged severally to two creditors, without any communication with each other, and one of them has obtained the possession, he is entitled to a preference. *Story on Bailm.* § 312. See 1 *Story's Eq. Jur.* §§ 64 c, 413.

IN ÆQUALI MANU. L. Lat. [L. Fr. *en owele mayn*.] In equal hand; held equally or indifferently between two parties. Where an instrument was deposited by the parties to it in the hands of a third person, to keep on certain conditions, it was said to be held *in æquali manu*. *Reg. Orig.* 28.

IN ALIENO SOLO. Lat. [L. Fr. *en auter soile*.] In another's land. 2 *Steph. Com.* 20.

IN ALTERNATIVIS ELECTIO EST DEBITORIS. In a case of alternatives, the choice is the debtor's.

IN AMBIGUA VOCE LEGIS. Lat. In an ambiguous expression of law. See maxim under *Ambiguus*.

IN AMBIGUIS ORATIONIBUS. Lat. In ambiguous discourses. See maxim under *Ambiguus*.

IN ANGLIA NON EST INTERREGNUM. In England there is no interregnum. *Jenk. Cent.* 205. *Broom's Max.* [39.]

IN ANTEA. L. Lat. Henceforth; in future. *Spelman*.

IN APERTA LUCE. L. Lat. In open daylight; in the day time. 9 *Co.* 65 b, *Mackalley's case*.

IN APICIBUS JURIS. L. Lat. Among the subtleties or extreme doctrines of the law. 1 *Kames' Equity*, 190. See *Apex juris*.

IN ARCTA ET SALVA CUSTODIA. L. Lat. In close and safe custody. 3 *Bl. Com.* 415.

IN ARTICULO. Lat. In a moment; immediately. *Cod.* 1. 34. 2.

IN ARTICULO MORTIS. L. Lat. In the article of death; at the point of death. 1 *Johns. R.* 159. See *Articulus*.

IN AUTER DROIT. L. Fr. In another's right. Properly, *en autre droit*, (q. v.)

IN AUTER SOILE. L. Fr. In or on another's land. *Dyer*, 36 b, (Fr. ed.)

IN BANCO. L. Lat. In banc or bank,

as distinguished from "at nisi prius." See *Banc, Bank*. This application of the phrase is plainly derived from the more ancient one, next noticed.

IN the Bench, or Court of Common Bench. *Bract*. fol. 352 b, 353, 354, 360 b. *Coram justitiariis de Banco, si qui tunc fuerint residentes in banco, et alii itinerantes in comitatu*; before the justices of the bench, if there be some then sitting in the bench, and others itinerating in the county. *Id.* fol. 361. *Sive in banco, sive in itinere*; whether in the bench or in the eyre. *Id.* fol. 352 b.

IN BLANK. A term applied to the indorsement of a bill or note, where it consists merely of the indorser's name. 2 *Steph. Com.* 164. Called *blank*, from the blank space left over it. See *Indorsement in blank*.

IN BONIS. Lat. Among the goods, or property; in actual possession. *Inst.* 4. 2. 2. *Tayl. Civ. Law*, 479. *Fleta*, lib. 3, c. 1, § 3. See *Ex bonis*.

IN CAPITA. Lat. To, or among heads or individuals; according to the number of persons. A term derived from the civil law. Succession *in capita* is where an inheritance is divided *viritem* (man by man, or singly,) according to the number of persons, all claiming in their own right as being in equal degree of kindred. *Hallifax, Anal.* b. 3, ch. 9, num. 5.

Εἰ δὲ πολλοὶ τοῦ αὐτοῦ βαθμοῦ ἐκτεθῶσι, κατὰ τὸν τῶν πρῶτων ἀριθμὸν μεταξὺ αὐτῶν ἡ κληρονομία διατρεθῆσεται, ὅπερ *in capita* οἱ ἡμετέροι λέγουσι νόμοι; but if there be found several of the same degree, the inheritance shall be divided among them according to the number of persons, which our laws call *in capita*. *Nov.* 118, c. 2, *ad finem*. See *Per capita*.

IN CAPITA. L. Lat. To the polls. See *Challenge to the polls*.

IN CAPITE. L. Lat. In chief. 2 *Bl. Com.* 60. Tenure *in capite* was a holding directly from the king. *Bacon's Works*, iv. 233.

IN CASU CONSIMILI. L. Lat. In a like case. See *In consimili casu*.

IN CASU PROVISIO. L. Lat. In a (or the) case provided. See *Casu provisio*. *In tali casu editum et provisum*; in such case made and provided. *Towns. Pl.* 164, 165.

IN CAUSA. Lat. In the cause, as distinguished from *in initialibus*, (q. v.) A term in Scotch practice. 1 *Brown's R.* 252.

In casu extremæ necessitatis, omnia sunt

communia. In a case of extreme necessity, all things are common. *Hale's P. C.* 54. *Broom's Max.* 1, note.

IN CHIEF. Relating to a principal matter; in the principal or direct course; as distinguished from incidental, collateral, derivative or adverse. See *Chief*.

IN COMMENDAM. L. Lat. In commendation; as a commended living. 1 *Bl. Com.* 393. See *Commenda*.

A term applied in Louisiana to a limited partnership, answering to the Fr. *en commandite*. *Civ. Code of Louis.* art. 2810. See *Commendam*.

In commodato hæc pactio, ne dolus præstetur, rata non est. In the contract of loan, a stipulation not to be liable for fraud is not valid. *Dig.* 13. 7. 17, pr.

IN COMMUNI. L. Lat. In common. *Fleta*, lib. 3, c. 4, § 2.

In conjunctivis oportet utramque partem esse veram. In conjunctives, it is necessary that each part be true. *Wingate's Max.* 13, max. 9. In a condition consisting of divers parts in the copulative, both parts must be performed. *Id. ibid.*

IN CONSIDERATIONE INDE. L. Lat. In consideration thereof. 3 *Salk.* 64, pl. 5.

IN CONSIDERATIONE LEGIS. L. Lat. In consideration or contemplation of law; in abeyance. *Dyer*, 102 b, *Lord Barkley's case*.

IN CONSIDERATIONE PRÆMISORUM. L. Lat. In consideration of the premises. 1 *Str.* 535.

In consimili casu, consimile debet esse remedium. In a like case, there ought to be a like remedy. *Hard.* 65.

IN CONSPECTU EJUS. L. Lat. In his sight or view. 12 *Mod.* 95.

In consuetudinibus, non diuturnitas temporis sed soliditas rationis est consideranda. In customs, not length of time but solidity of reason is to be considered. *Co. Litt.* 141 a. The antiquity of a custom is to be less regarded than its reasonableness.

IN CONTINENTI. Lat. Immediately; without any interval or intermission. *Calv. Lex.* Sometimes written as one word, *incontinenti*, (q. v.)

IN CONTINENTIBUS. Lat. In the suburbs. See *Continens*.

In contractibus tacite insunt [veniunt] quæ sunt moris et consuetudinis. In contracts, matters of custom and usage are tacitly implied. A contract is understood to contain the customary clauses, although

they are not expressed. *Story on Bills*, § 143. 3 *Kent's Com.* 260, note. *Broom's Max.* [667.] See *Benignus*.

**IN CONTRACTIBUS, REI VERITAS POTIUS QUAM SCRIPTURA PERSPICICI DEBET.** In contracts, the truth of the matter ought to be regarded rather than the writing. *Cod.* 4. 22. 1.

**IN CONTRAHENDA VENDITIONE, AMBIGUUM PAC-TUM CONTRA VENDITOREM INTERPRETANDUM EST.** In the contract of sale, an ambiguous agreement is to be interpreted against the seller. *Dig.* 50. 17. 172. See *Id.* 18. 1. 21.

**IN CONVENTIONIBUS CONTRAHENTIUM, VOLUNTATEM POTIUS QUAM VERBA SPECTARI PLACUIT.** In the agreements of contracting parties, the rule is to regard the intention rather than the words. *Dig.* 50. 16. 219. 2 *Kent's Com.* 555.

**IN CORPORE.** Lat. In body, or substance; in a material thing or object. *Sive consistant* in corpore, *sive in jure*; whether they consist in, or belong to a material object, or a mere right. *Bract.* fol. 37 b.

**IN CRASTINO.** L. Lat. On the morrow. *In crastino Animarum*; on the morrow of All Souls. 1 *Bl. Com.* 342. See *Crastino*.

**IN CRIMINALIBUS, PROBATIONES DEBENT ESSE LUCE CLARIORES.** In criminal cases, the proofs ought to be clearer than light. 3 *Inst.* 210. See *Cod.* 4. 19. 25.

**IN CRIMINALIBUS SUFFICIIT GENERALIS MALITIA INTENTIONIS, CUM FACTO PARIS GRADUS.** In criminal matters or cases, a general malice of intention is sufficient, [if united] with an act of equal or corresponding degree. *Bacon's Max.* 65, reg. 15. "All crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact; which, though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of that error, if another particular ensue of as high a nature." *Id.* *ibid.* See *Criminalis*.

In the translation of this maxim in Branch's *Principia*, the words "*cum facto paris gradus*" are erroneously rendered, "keeping equal pace with the fact committed;" and the error is closely followed in Wharton's *Lexicon*. Lord Bacon's own words, "another particular of as high a nature," sufficiently explain the meaning.

**IN CUJUS REI TESTIMONIUM.** L. Lat. [L. Fr. *en tesmoignance de quel chose*.] In witness or testimony whereof. The initial words of the concluding clause

in ancient deeds, constituting one of the formal and orderly parts of the instrument. *Co. Litt.* 6 a. 6 *Man. & Gr.* 457. The whole clause, as given by Fleta, ran thus: *In cujus rei testimonium, huic scripto sigillum meum apposui*; In witness whereof, I have to this writing set my seal. *Fleta*, lib. 3, c. 14, § 13. As given by Littleton, it ran thus: *In cujus rei testimonium, partes prædictæ sigilla sua præsentibus alternatim apposuerunt*; In witness whereof, the parties aforesaid to these presents interchangeably have put their seals. *Litt.* 371.

A clause beginning with the same words anciently formed the conclusion of letters patent. *In cujus rei testimonium, has literas nostras (vel meas) fieri fecimus (vel feci) patentes*; In witness whereof, we (or I) have caused these our (or my) letters to be made patent. *Reg. Orig.* 4 b. And a similar clause concludes some of the old statutes. *Stat. de Tallagio*, 2 *Inst.* 536. *Stat. of Tithes*, *Id.* 639.

**IN CUSTODIA LEGIS.** L. Lat. In the custody or keeping of the law. 2 *Steph. Com.* 74.

**IN DAMNO.** L. Lat. In damage; doing damage. *Bract.* fol. 158. See *Damnnum*.

**IN DEFENSO.** L. Lat. In defence; in a state of prohibition; in fence; inclosed. A term applied, in old English law, to lands either actually surrounded by an enclosure, or otherwise exclusively appropriated. See *Defensum*. Applied also to rivers and their banks. *Magna Charta*, c. 16. *Provisum est quod aquæ de Humbre, &c. et omnes aliæ aquæ in regno in quibus salmone capiuntur, ponantur in defenso, quoad salmone capiendos, a die, &c.*; it is provided that the waters of the Humber, and all other waters in the kingdom in which salmons are taken, shall be put in *defense*, as to the taking of salmons, from, &c. *Stat. Westm.* 2, c. 47. See *Defendere*.

**IN DELICTO.** Lat. In fault; in guilt; culpable; guilty. "Where both parties are in *delicto*, concurring in an illegal act, it does not always follow that they stand in *pari delicto*; for there may be, and often are, very different degrees in their guilt." 1 *Story's Eq. Jur.* § 300.

In guilt; in the act of committing an offence; in a prohibited act or course. 1 *Kent's Com.* 151, 191.

**IN DIEM.** Lat. For a day; for the space of a day. *Calv. Lex. Spiegelius*.

On, or at a day. *In diem debitum*; a

debt due at a certain day. *Calv. Lex. Brissoni.*

**IN DISJUNCTIVIS, sufficit alteram partem esse veram.** In disjunctives, it is sufficient that either part be true. Where a condition is in the disjunctive, it is sufficient if either part be performed. *Wingate's Max.* 13, max. 9. Lord Ellenborough, 7 *East*, 272. *Broom's Max.* [455.] See *Ubi verba conjuncta, &c.*

**IN DOMINICO.** L. Lat. In demesne. *In dominico suo, ut de feodo*; in his demesne as of fee. *Bract.* fol. 253 b, 261 b. *Fleta*, lib. 2, c. 54, § 18. 1 *Recves' Hist.* 428. *Co. Litt.* 17 a. 2 *Bl. Com.* 105, 106. See *Dominicum.*

**IN DORSO.** L. Lat. On the back. 2 *Bl. Com.* 468. 2 *Steph. Com.* 164. *In dorso recordi*; on the back of the record. 5 *Co.* 45. Hence the English *indorse, indorsement, &c.*

**IN DUBIIS.** Lat. In doubtful cases; in matters or cases of doubt. **In dubiis magis dignum est accipiendum.** In doubtful cases, the more worthy is to be taken. *Branch's Princ.*

**In dubiis, benigniora præferenda sunt.** In doubtful cases, the more favorable views are to be preferred: the more liberal interpretation is to be followed. *Dig.* 50. 17. 56. 2 *Kent's Com.* 557. See **Semper in dubiis, &c.**

**In dubiis, non præsumitur pro testamento.** In cases of doubt, the presumption is not in favor of a will. *Branch's Princ.* But see *Cro. Car.* 51.

**IN DUBIO.** Lat. In doubt; in a state of uncertainty.

**In a doubtful case. In dubio hæc legis constructio quam verba ostendunt.** In a case of doubt, that is the construction of the law which the words indicate. 10 *Mod.* 117. *Branch's Princ.*

**IN DUPLO.** Lat. In double. *Damna in duplo*; double damages. *Fleta*, lib. 4, c. 10, § 1.

**IN DUPLUM.** Lat. For the double value. *Inst.* 4. 6. 23. *Bract.* fol. 103.

**IN EADEM CAUSA.** Lat. In the same state or condition. *Calv. Lex. Spiegelius.*

**IN EMULATIONEM VICINI.** Lat. In envy or hatred of a neighbor. Where an act is done, or action brought, solely to hurt or distress another, it is said to be *in emulationem vicini*. 1 *Kames' Equity*, 56.

**In eo quod plus sit, semper inest et minus.** In the greater is always included the less also. *Dig.* 50. 17. 110.

**IN ESSE.** L. Lat. In being; in existence. *Bacon's Arg.* Low's Case of Tenures. Distinguished from *in posse*, or in mere possibility. 2 *Bl. Com.* 169. See *Esse, Posse, In posse.*

**IN EXCAMBIO.** L. Lat. In exchange. Formal words in old deeds of exchange. *West's Symbolcogr.* part 1, lib. 2, sect. 513.

**IN EXITU.** L. Lat. In issue. *De materia in exitu*; of the matter in issue. 12 *Mod.* 372.

**IN EXPERIENCE.** L. Fr. Concerned. *Q'il av' estr'* in experience *ove cest case*; that he had been concerned in this case. *Dyer*, 32, (Fr. ed.)

**IN EXTREMIS.** Lat. In extremity; in the last extremity; in the last illness. 3 *P. Wms.* 93. 20 *Johns. R.* 502. *Kent, C. Id.* 514. 2 *Bl. Com.* 375, 500. *Agens in extremis*; being in extremity. *Bract.* fol. 373 b. Declarations *in extremis*; dying declarations. 15 *Johns. R.* 286. 1 *Greenl. on Evid.* § 156.

**IN FACIE CURIÆ.** L. Lat. In the face of the court. *Dyer*, 28.

**IN FACIE ECCLESIAE.** L. Lat. In the face of the church. A term applied, in the law of England, to marriages, which are required to be solemnized in a parish church or public chapel, unless by dispensation or license. 1 *Bl. Com.* 439. 2 *Steph. Com.* 288, 289. Applied, in Bracton, to the old mode of conferring dower. *Bract.* fol. 92. 2 *Bl. Com.* 133.

**IN FACIENDO.** L. Lat. In doing; in feaſance. 2 *Story's Eq. Jur.* § 1308.

**IN FACILI.** Lat. Easily; easy of determination or explanation. *Calv. Lex.*

**IN FACTO.** Lat. In fact; in deed. *In facto dicit*; in fact says. 1 *Salk.* 22, pl. 1. See *Factum.*

Depending on fact. *Calv. Lex.*

**In facto quod se habet ad bonum et malum, magis de bono quam de malo lex intendit.** In an act or deed which admits of being considered as both good and bad, the law intends more from the good than from the bad; the law makes the more favorable construction. *Co. Litt.* 78 b.

**IN (or EN) FAIT.** L. Fr. In fact; in deed. Lord Coke distinguishes "matters of record" from "matters in fait." *Co. Litt.* 380 b.

**In favorabilibus magis attenditur quod prodest quam quod nocet.** In things favored, what profits is more regarded than what prejudices. *Bacon's Max.* 57, in reg. 12.

**IN FAVOREM LIBERTATIS.** L. Lat. In favor of liberty. *Fleta*, lib. 2, c. 51, § 3. 2 *W. Bl.* 746.

**IN FAVOREM VITÆ.** L. Lat. In favor of life. *Bacon's Max.* 36, in reg. 7. 4 *Bl. Com.* 338. In *favorem vitæ libertatis et innocentie omnia præsumuntur.* All things are presumed in favor of life, liberty and innocence. *Lofft's R.* Appendix, 125.

**IN FELONIA.** L. Lat. In felony; in a felonious manner; feloniously. *Nequiter et in feloniam*; wickedly and feloniously. *Bract.* fol. 121. *Fleta*, lib. 1, c. 31, § 7.

**IN FEODO.** L. Lat. In fee. *Bract.* fol. 207, *et passim.* *Fleta*, lib. 2, c. 64, § 15. *Seisitus in feodo*; seised in fee. *Fleta*, lib. 3, c. 7, § 1.

**In fictione juris semper æquitas existit.** In the fiction of law there is always equity; a legal fiction is always consistent with equity. 11 *Co.* 51 a, *Liford's case.* *Broom's Max.* 54, [90.] The court will not endure that a mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the thing. Lord Mansfield, C. J. 2 *Burr.* 950, 962. Otherwise expressed, *In fictione juris semper subsistit æquitas.* 3 *Bl. Com.* 43. *In fictione juris consistit æquitas.* *Id.* 283.

**IN FIERI.** L. Lat. In being made, or done; in course or process of being made, made up or done; imperfect; incomplete; The proceedings in a cause are said to be *in fieri*, until judgment is given and the record made up. 3 *Bl. Com.* 406. Anciently, while the pleading *ore tenus* was going on, the record was *in fieri.* *Gilb. C. Pleas*, 115. The term has also been used as descriptive of the proceedings in a chancery suit before issue joined. *Gilb. For. Rom.* 49. It has also been applied to a contract. "It was a contract *in fieri.*" 3 *East*, 303.

**IN FORMA PAUPERIS.** L. Lat. In the form or manner of a poor person; as a poor person; in the character of a pauper. 2 *Burr. Pr.* 104.

**IN FORMA PRÆDICTA.** L. Lat. In form aforesaid. *Perkins*, ch. 3, s. 242.

**IN FORO.** Lat. In a, or the forum, court or tribunal. See *infra*.

**IN FORO CONSCIENTIÆ.** L. Lat. In the forum of conscience. *Story on Bailm.* § 391 a, 391 b.

**IN FORO CONTENTIOSO.** Lat. In the form of contention or litigation.

*Hale's Hist. Com. Law*, 28, (Runnington's ed. 1820.)

**IN FORO ECCLESIASTICO.** L. Lat. In an ecclesiastical forum; in the ecclesiastical court. *Fleta*, lib. 2, c. 57, § 13.

**IN FORO SÆCULARI.** L. Lat. In a secular forum or court. *Fleta*, lib. 2, c. 57, § 14. 1 *Bl. Com.* 20.

**IN FRAUDEM LEGIS.** Lat. In fraud of the law. 3 *Bl. Com.* 94. With the intent or view of evading the law. 1 *Johns. R.* 424, 432. "It may be laid down as a general principle, that whenever an act is done *in fraudem legis*, it cannot be the basis of a suit in the courts of the country whose laws are attempted to be infringed." *Id.* 433, Spencer, J. See 15 *Johns. R.* 146. *Contra legem facit qui id facit quod lex prohibet*; in fraudem vero, qui, *salvis verbis legis, sententiam ejus circumvenit*; he acts against the law, who does that which the law forbids; but he acts in fraud of the law, who, saving the words of the law, circumvents its meaning. *Dig.* 1. 3. 29.

**IN FRAUDEM CREDITORUM.** Lat. In fraud of creditors; with intent to defraud creditors. *Inst.* 1. 6, pr. 3. *Dig.* 42. 8.

**IN FULL LIFE.** Alive in fact and in law. This phrase is a literal translation of the L. Fr. *en pleyn vie*, (q. v.) and seems to have been constructed with reference to the two kinds of death recognised in law, viz: *natural and civil.* A party may be physically alive, or *in life*, (*en vie*.) and yet civilly dead; hence the use of the phrase to express life in both senses, or in the fullest sense of the word.

**IN FUTURO.** Lat. In future; at a future time; the opposite of *in præsent.* 2 *Bl. Com.* 166, 175.

**IN GENERALI PASSAGIO.** L. Lat. In the general passage [to the Holy Land.] A term of frequent occurrence in the old law of essoins, importing that the party essoined had gone beyond the sea with the great body of crusaders, instead of performing a pilgrimage alone, which was called the simple or single passage or pilgrimage, (*simplex passagium* or *peregrinatio*.) *Bract.* fol. 338, 339. *Britt.* cc. 122, 123.

**IN GENERE.** Lat. In kind; of the same kind; generically. In the civil law, things are divided into those which may be furnished *in genere*, and those which must be furnished *in specie*, or specifically. 1 *Mackeld. Civ. Law*, 152, § 148. See *In specie*.

In general. *In genere, quicunque ali-*

*quid dicit, sive actor sive reus, necesse est ut probet*; in general, whoever affirms any thing, whether plaintiff or defendant, must prove it. *Matth. de Prob. c. 8, n. 4. Best on Evid. 294, § 252.*

IN GREMIO LEGIS. L. Lat. In the bosom of the law; in abeyance. 1 *Co.* 131 a, *Chudleigh's case. T. Raym.* 319.

Under the protection of the law. 14 *Howard's R.* 375.

IN GROSS. [L. Lat. *in grosso.*] In a large quantity or sum; without division or particulars; by wholesale. See *In grosso.*

At large; not annexed to, or dependent upon another thing. Common in gross is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. 2 *Bl. Com.* 34. Applied also to advowsons, and anciently to villeins annexed or belonging to the person. See *Advowson in gross.*

IN GROSSO. L. Lat. In gross; by wholesale. *Nec in grosso, nec ad retailiam*; neither in gross, nor by retail. *Reg. Orig.* 184.

IN HAC PARTE. L. Lat. In this behalf. *Reg. Orig.* 25.

IN HÆC VERBA. Lat. In these words; in the same words. *Dig.* 34. 4. 30, pr. The same with *his verbis. Id. ibid.*

IN HUNC MODUM. L. Lat. After this manner. *Fleta*, lib. 2, c. 64, § 1.

IN HISDEM TERMINIS. L. Lat. In the same terms. 9 *East*, 487.

IN INDIVIDUO. L. Lat. In the distinct, identical or individual form; *in specie. Story on Bailm.* § 97.

In particular; particular; special. See *Criminalis.*

IN INITIALIBUS. Lat. In the preliminaries. A term in Scotch practice, applied to the preliminary examination of a witness, as to the following points: whether he knows the parties, or bears ill-will to either of them, or has received any reward or promise of reward for what he may say; or can lose or gain by the cause; or has been told by any person what to say. If the witness answer these questions satisfactorily, he is then examined *in causa*, in the cause. *Bell's Dict.* Evidence. 2 *Alison's Crim. Prac.* 438. 1 *Brown's R.* 252. See *In causa.*

IN INITIO. Lat. In, or at the beginning. *In initio litis*; at the beginning, or in the first stage of the suit. *Bract.* fol. 400.

IN INTEGRUM. Lat. To the original or former state. *Calv. Lex.* See *Integer. Dig.* 4. 1. *Id.* 4. 6.

IN INVITUM. Lat. Against an unwilling party; against a party without his consent. The law presumes *quod judicium redditur in invitum*, that a judgment is a proceeding against a party's will. 5 *Co.* 28 b, *Harrison's case.* 1 *Stra.* 382. 1 *Steph. Com.* 444. 2 *Florida R.* 620. *Item contra voluntatem domini quandoque transfertur dominium, s. per judicem, quia judicium ruit in invitum*; also, ownership is sometimes transferred against the owner's will, to wit, by a judge, [i. e. by the act of a court,] because a judgment goes, [literally, *rushes*, implying forcible or compulsory progress,] against an unwilling party. *Bract.* fol. 41 b.

IN IPSIS FAUCIBUS. Lat. In the very throat or entrance. *In ipsis faucibus* of a port; actually entering a port. 1 *Rob. Adm. R.* 233, 234.

IN ITINERE. Lat. On the voyage; on the way. The same as *in transitu.* Sir William Scott, (*The Vrow Margaretha*), 1 *Rob. Adm. R.* 338.

IN JUDGMENT. In a court of justice; in a seat of judgment. Lord Hale is called "one of the greatest and best men who ever sat in judgment." Lord Kenyon, C. J. 1 *East*, 306.

IN JUDICIO. Lat. Before a *judex* or judge; in the course of actual trial. A term used, in the Roman law, to denote the second stage of the proceedings in an action, as distinguished from those *in jure*, (q. v.) before the prætor, which constituted the first stage. See *Actio.*

By a course of judicial proceeding; judicially; by action. *Eorum quæ non in judicio, sed extra prosequimur, sicut furem, &c.*; of those things which we prosecute not in judgment or by action, but without, as a thief, &c. *Bract.* fol. 98 b. *Sine judicio*; without due course of law. *Id.* fol. 196.

In judgment; in a course of judicial investigation.

In a judicial proceeding. See the maxims, *infra.*

In court; in or before a court. In this sense, the phrase occurs in the civil law, and constantly in Bracton. *Præsens in judicio*; present in court. *Inst.* 4. 11. 3. *Ubi, et coram quibus personis præponendæ sunt actiones et probandæ; et sciendæ quod in judicio*; where and before what

persons actions are to be propounded and proved; and it is to be known that it is in a court. *Bract.* fol. 106. *Partibus* in judicio *comparentibus*; the parties appearing in court. *Id.* fol. 183 b. *Pars* in judicio; a party in court. *Id. ibid.* *Si ambo fuerint presentes* in judicio, *petens et tenens*; if both the parties be present in court, demandant and tenant. *Id.* fol. 257 b. And see *Id.* fol. 281 b, 288, 353 b. *Fleta*, lib. 4, c. 7, § 2.

*In judicio non creditur nisi juratis.* In a court of justice, credit is not given to [the statements of] persons unless they are sworn. No person is allowed to testify in court except under oath. *Cro. Car.* 64. 1 *Bl. Com.* 402. See *Confessio facta in judicio*, &c. *Confessus in judicio*, &c.

*In judiciis minori ætati succurritur.* In courts or judicial proceedings, infancy is aided or favored. *Jenk. Cent.* 46, case 89.

*IN JURE.* Lat. In law; in the merely formal or introductory part of the proceedings; before the prætor or magistrate. This was the peculiar sense of the term in the Roman law, being descriptive of the first of the two stages of the proceedings in an action; the second stage being said to be *in judicio*, (q. v.) See *Actio*. The office of the magistrate was to inquire into matters of law, and whatever business was transacted before him was said to be done *in jure*. *Hallifax, Anal.* b. 3, ch. 8, num. 7.

In law; according to law; rightfully. *In jure, vel extra jus*; by law, or without law. *Bract.* fol. 169 b.

*In jure, non remota causa, sed proxima spectatur.* In law, not the remote but the proximate cause is considered. *Bacon's Max.* 1, reg. 1. *Broom's Max.* 104, [165.] See *Causa proxima non remota spectatur*.

*IN JURE ALTERIUS.* Lat. In another's right. *Hale's Anal.* sect. xxvi.

*IN JURE PROPRIO.* Lat. In one's own right. *Hale's Anal.* sect. xxvi.

*IN JUS VOCARE.* Lat. To call, cite or summon to court. *Inst.* 4. 16. 3. *Dig.* 2. 4. *Cod.* 2. 2. *Culv. Lex.* *In jus vocando*; summoning to court. *Dig.* 2. 4. 3 *Bl. Com.* 279.

*IN LATROCINIO.* L. Lat. In larceny; as a thief. *Fleta*, lib. 1, c. 38, § 3.

*IN LECTO MORTALI.* Lat. On the death-bed. *Fleta*, lib. 5, c. 28, § 12.

*IN LIMINE.* Lat. On, or at the threshold; preliminarily.

*IN LITEM.* Lat. For a, or the suit. See *Ad litem*. Applied to a plaintiff's

oath when allowed in a suit. 1 *Greenl. Evid.* § 348.

*IN LOCO.* Lat. In place; in lieu; instead; in the place or stead. *Towns. Pl.* 38.

*IN LOCO PARENTIS.* Lat. In the place of a parent. 1 *Bl. Com.* 453. 2 *Steph. Com.* 331. 2 *Kent's Com.* 192. 1 *Story's Eq. Jur.* § 339.

*IN MAJOREM CAUTELAM.* Lat. For greater security. 1 *Stra.* 105, arg.

*In majore summa continetur minor.* In the greater sum is contained the less. 5 *Co.* 115 a, *Wade's case*. This very simply constructed maxim has been singularly mistranslated in Branch and Wharton.

*In maleficiis voluntas spectatur, non exitus.* In offences, the intent is regarded, not the consequence. *Dig.* 48. 8. 14. The words of a rescript of the emperor Hadrian.

*In maleficio ratihabito mandato comparatur.* In a case of malfeasance, ratification is equivalent to command. *Dig.* 50. 17. 152. 2.

*IN MATERIA.* L. Lat. In the matter; in the case. *Dyer*, 34 b.

*In maxima potentia minima licentia.* In the greatest power there is the least freedom. *Hob.* 159.

*IN MEDIO.* L. Lat. Intermediate. A term applied, in Scotch practice, to a fund held between parties litigant.

*IN MEDITATIONE FUGÆ.* L. Lat. In contemplation of flight. 2 *Kames' Equity*, 14, 15.

*In mercibus illicitis non sit commercium.* There should be no commerce in illicit or prohibited goods. 3 *Kent's Com.* 262 note.

*IN MERCY.* [L. Fr. *en mercie*; L. Lat. *in misericordia*.] A phrase used at the conclusion of judgment records, derived from the old practice of *amercing* parties against whom judgment was rendered. Thus, where judgment was rendered for the plaintiff, it was also considered that the defendant be "*in mercy*, &c.," that is, that he be *amerced* for his wilful delay of justice, in not immediately obeying the king's writ by rendering the plaintiff his due. 3 *Bl. Com.* 398. This phrase has been literally retained in modern practice. So, where judgment was for the defendant, it was considered that the plaintiff and his pledges be "*in mercy* [that is, *amerced*] for his false claim." *Id.* 399, 376. *Fleta*, lib. 2, c. 54, § 24. See *In misericordia*.

IN MERO JURE. L. Lat. On the mere right. *Yearb. M. 1 Edw. II. 2.*

IN MPA. L. Lat. An old abbreviation of *in misericordia*, used at the conclusion of judgment records, and also written in the margin. *Hob. 127. Towns. Pl. 494, 497, 502.*

IN MISERICORDIA. L. Lat. In mercy; subject or liable to amercement. *In misericordia pro falso clamore suo*; in mercy for his false claim. *3 Bl. Com. 376, 398, 399. Fleta, lib. 2, c. 61, § 16. See In mercy, Misericordia.*

IN MITIORI SENSU. L. Lat. In the milder or more favorable sense. *Hob. 77 b.*

IN MODUM ASSISÆ. L. Lat. In the manner or form of an assise. *Bract. fol. 183 b. In modum jurata*; in manner of a jury. *Id. fol. 181 b.*

IN MORA. Lat. [Fr. *en demeure*.] In default; literally, in delay. In the civil law, a borrower who omits or refuses to return the thing loaned at the proper time is said to be *in mora*. *Story on Bailm. §§ 254, 259.*

In Scotch law, a creditor who has begun without completing diligence necessary for attaching the property of his debtor, is said to be *in mora*. *Bell's Dict.*

IN MORTUA MANU. L. Lat. In a dead hand; in the hands of a person dead in law, as ecclesiastical bodies anciently were; in mortmain. *1 Bl. Com. 479. Co. Litt. 2 b. See Mortmain.*

IN NOMINE DEI, AMEN. Lat. In the name of God, Amen. A solemn form of introduction, anciently used in wills and many other instruments, public and private. The Proemia to the Institutes and Digests of Justinian commence, *In nomine Domini nostri Jesu Christi*; in the name of our Lord Jesus Christ. The confirmation of the Code and several of the Novels are introduced with the same form. Some old wills began, *In nomine Patris, et Filii, et Spiritus Sancti, Amen.* *Blount, voc. Will.* Mercantile instruments, such as protests, policies, procurations, &c. frequently began, *In Dei nomine, Amen.* See *West's Symboleogr. part 1, lib. 2, sect. 662, 666, 668, 669, 670, 672.*

IN NUBIBUS. L. Lat. In the clouds; in a state of suspension or abeyance; not in any person living; no where; in consideration and intendment of law; in the custody or preservation of the law. *Litt. sect. 646, 650. Hob. 335. Periam, C. B.*

*1 Co. 134 a, Chudleigh's case.* In the same case, Clarke, B. speaking of future uses, observed, "some have supposed they were preserved *in nubibus*, and in the custody of the law, but," he said, "in our case, be they below in the land, there they should be perpetually buried, and should never rise again; and be they above *in nubibus*, in the clouds, there they should always remain, and should never descend." *1 Co. 137 b.*

IN NULLIUS BONIS. Lat. Among the goods or property of no person; belonging to no person, as treasure-trove and wreck were anciently considered. *Bract. fol. 120. Thesaurus in nullius bonis est. Id. ibid.* In the civil law, things sacred and religious were considered as not the subjects of private property. *Nullius sunt res sacræ, et religiosæ, et sanctæ. Inst. 2. 1. 7. Dig. 1. 8, pr.* Animals *feræ naturæ*, while they remain wild, are accounted *nullius in bonis*, the common property of mankind. *2 Steph. Com. 17. See Res nullius.*

IN NULO EST ERRATUM. L. Lat. In nothing is there error. The name of the common plea or joinder in error, denying the existence of error in the record or proceedings; which is in the nature of a demurrer, and at once refers the matter of law arising thereon, to the judgment of the court. *2 Tidd's Pr. 1173. Shaw, C. J. 7 Metcalf's R. 285, 287.*

In *obscuris inspicere solere quod verisimilius est, aut quod plerumque fieri solet.* In obscure cases, we usually look at what is most probable, or what most commonly happens. *Dig. 50. 17. 114.*

In *obscuris quod minimum est sequimur.* In obscure or doubtful cases, we follow that which is the least. *Dig. 50. 17. 9. 2 Kent's Com. 557.* The precise meaning of this maxim is not very clearly explained in the civil law. *Dig. ub. sup. gloss. marg.*

IN OCTAVIS (or OCTABIS.) L. Lat. On the octave. One of the ancient return days in the English courts. *3 Bl. Com. 277, 278. Reg. Orig. 17 b, et passim. Towns. Pl. 141, 142. In octabis Sancti Hilarii*; on the octave of St. Hilary. *Id. ibid. See Octave.*

IN ODIUM SPOLIATORIS. Lat. In hatred [as a mark of hatred] of a despoiler, robber, destroyer or wrong-doer. *Story, J. 1 Gallison's R. 174. 2 Story's R. 99. 1 Greenl. Evid. § 348.*

In *odium spoliatoris omnia presumuntur.* All things are presumed against a

despoiler; every presumption is made against a wrong-doer. 1 *Vern.* 452. *Branch's Princ.*

**IN OMNI RE NASCITUR RES QUÆ IPSAM REM EXTERMINAT.** In every thing there arises a thing which destroys the thing itself. Every thing contains the element of its own destruction. 2 *Inst.* 15.

**IN OMNIBUS.** Lat. In all things; on all points. "A case parallel in omnibus." 10 *Mod.* 104. "Wyndham, J. agreed in omnibus." 2 *Id.* 13.

**IN OMNIBUS CONTRACTIBUS, SIVE NOMINATIS SIVE INNOMINATIS, PERMUTATIO CONTINETUR.** In all contracts, whether nominate or innominate, an exchange [of value, i. e. a consideration] is implied. *Gravin.* lib. 2, § 12. 2 *Bl. Com.* 444, note.

**IN OMNIBUS OBLIGATIONIBUS IN QUIBUS DIES NON PONITUR, PRÆSENTI DIE DEBETUR.** In all obligations in which a date is not put, the debt is due on the present day; the liability accrues immediately. *Dig.* 50, 17. 14.

**IN OMNIBUS [FERE] PÆNALIBUS JUDICIIS, ET ÆTATI ET IMPRUDENTIÆ SUCCURRITUR.** In nearly all penal judgments, immaturity of age and imbecility of mind are favored. *Dig.* 50, 17. 108.

**IN OMNIBUS QUIDEM, MAXIME TAMEN IN JURE, ÆQUITAS SPECTANDA SIT.** In all things, but especially in law, equity is to be regarded. *Dig.* 50, 17. 90. *Story on Bailm.* § 257.

**IN ORE.** Lat. In the mouth. See *Jacet in ore.*

**IN PACE DEI ET REGIS.** L. Lat. In the peace of God and the king. *Fleta*, lib. 1, c. 31, § 6. Formal words in old appeals of murder.

**IN PAIS, En pais, En pays.** L. Fr. In the country, as distinguished from "*in court*;" out of court, or without judicial process; by deed, or not of record. Matter in pais is distinguished from matter of record. 2 *Bl. Com.* 294. Conveyances were anciently either by matter in pais, or deed, which was an assurance transacted between two or more private persons in pais, in the country, that is, (according to the old common law,) upon the very spot to be transferred; or by matter of record, or an assurance transacted only in the king's public courts of record. *Id.* *ibid.* 1 *Steph. Com.* 466. *Hale's Anal.* sect. xxxv. *Story on Agency*, § 25, note. So, a disclaimer in pais is distinguished from a disclaimer in a court of record. *Litt.* sect. 695. *Co. Litt.* 364 a. *Per*

*fait fait en pays*; by deed made in the country. *Litt.* sect. 618. Notice in pais is notice given without the instrumentality of a court. *Story on Bailm.* § 348.

Without writing, as distinguished from *by deed*. Thus, estoppels are said to be either by matter of record; by matter in writing, as by deed indented, &c.; and by matter in pais, or in the country, without any writing, as by livery, by entry, by acceptance of rent, &c. *Co. Litt.* 352 a.

**IN PAPER.** A term formerly applied to the proceedings in a cause before the record was made up. 3 *Bl. Com.* 406. 2 *Burr.* 1098. Probably from the circumstance of the record being always on parchment. The opposite of "on record," or "of record." *Denison, J.* 1 *Burr.* 322. 10 *Mod.* 88.

**IN PARI CAUSA.** Lat. In an equal cause or matter; in a case affecting two equally. In pari causa, possessor potior haberi [esse] debet. Where two persons have equal rights in reference to the same thing, the party in possession ought to be regarded as the better; that is, his right should have the preference. *Dig.* 50, 17. 128, pr. [170.] *Broom's Max.* [562.] 1 *Wooddes. Lect.* *Intro.* lxxi. note. Where a thing is pledged severally to two creditors, without any communication with each other, and one of them has obtained the possession, he is entitled to a preference. *Story on Bailm.* § 312.

**IN PARI DELICTO.** Lat. In equal fault; equally culpable or criminal; in a case of equal fault or guilt. 1 *Story's Eq. Jur.* § 300. 1 *Campb.* 398. See *In delicto.*

In pari delicto, potior est conditio possidentis [defendentis.] In a case of equal or mutual fault [between two parties,] the condition of the party in possession [or defending,] is the better one. Lord Mansfield, 2 *Burr.* 926. Where each party is equally in fault, the law favors him who is actually in possession. *Broom's Max.* 325, [567, 572.] Where the fault is mutual, the law will leave the case as it finds it. *Story on Agency*, § 195. Thus, where money is paid by one of two parties to an illegal contract to the other, in a case where both may be considered as *participes criminis*, an action cannot be maintained after the contract is executed, to recover the money. 1 *Selw. N. P.* 90. So, the premium paid on an illegal insurance cannot be recovered back, though the underwriter cannot be compelled to make good the loss. 1 *East*,

96. *Dougl.* 451. 2 *Steph. Com.* 183. See 1 *Story's Eq. Jur.* §§ 61, 298. And see 25 *Penn. St. R.* 441. This maxim is merely another form of the civil law maxim, *Cum par delictum est duorum, semper oneratur petitor, et melior habetur possessoris causa*, (q. v.)

IN PARI JURE. L. Lat. In equal right. "Persons standing in *pari jure* or in *eodem jure*." Lord Ellenborough, 4 *M. & S.* 491.

IN PARI MATERIA. L. Lat. Upon the same subject. A phrase frequently applied to statutes. Lord Ellenborough, 9 *East*, 468. 1 *Steph. Com.* 74. 1 *Kent's Com.* 463. 3 *Howard's R.* 556, 563.

IN PATRIMONIO. Lat. As a subject of property. *Fleta*, lib. 3, c. 1, § 2.

IN PECTORE JUDICIS. Lat. In the breast of the judge. *Latch*, 180. A phrase applied to a judgment.

IN PEJOREM PARTEM. L. Lat. In the worst part; on the worst side. *Latch*, 159, 160.

IN PENDENTI. Lat. In suspension, or abeyance. *Bract.* fol. 12, 19 b. Written in *Fleta*, as one word, *inpendenti* and *impendenti*. *Fleta*, lib. 3, c. 9, § 7.

IN PERPETUAM REI MEMORIAM. Lat. In perpetual memory of a matter. *Gilb. For. Rom.* 118.

IN PERPETUUM. Lat. Forever. *Perkins*, ch. 8, s. 557. Sometimes written in one word, *imperpetuum*, (q. v.)

IN PERPETUUM REI TESTIMONIUM. L. Lat. In perpetual testimony of a matter; for the purpose of declaring and settling a thing forever. 1 *Bl. Com.* 86.

IN PERSONAM. Lat. Against the person; against a person. *Inst.* 4. 6. 1. *Fleta*, lib. 2, c. 60, § 21. 1 *Kent's Com.* 379. See *Actio in personam*.

IN PIOS USUS. L. Lat. For pious uses; for religious purposes. 2 *Bl. Com.* 505.

IN PLENA VITA. L. Lat. In full life. *Yearb.* P. 18 Hen. VI. 2.

IN PLENO COMITATU. L. Lat. In full county court. 2 *Bl. Com.* 36.

In *pœnalibus causis*, benignius interpretandum est. In penal causes or cases, the more favorable interpretation should be adopted. *Dig.* 50. 17. 155. 2. *Plowd.* 86 b, 124. 2 *Hale's P. C.* 365.

IN POSSE. L. Lat. In possibility; not in actual existence. See *In esse*.

IN POSTERUM. L. Lat. Hereafter. Called a forcible word to create a special

inheritance. 3 *Leon.* 87. Lord Ellenborough, 1 *M. & S.* 136.

IN POTESTATE PARENTIS. Lat. In the power of a parent. *Inst.* 1. 8, pr. *Id.* 1. 9. 2 *Bl. Com.* 498.

IN PRÆJUDICIUM. L. Lat. To the prejudice; in prejudice. *Mem. in Scacc.* M. 22 Edw. I.

IN PRÆMISSIS. L. Lat. In the premises. *Reg. Orig.* 17 b. *Fleta*, lib. 3, c. 10, § 1. See *Præmissa*.

IN PRÆMISSORUM FIDEM. L. Lat. In confirmation or attestation of the premises. A notarial phrase.

IN PRÆPARATORIIS. Lat. In, or among preliminary proceedings. *Bract.* fol. 400. In *præparatoriis ad judicium favetur actori*; in the proceedings preliminary to judgment the plaintiff is favored. 2 *Inst.* 57.

IN PRÆSENTI. L. Lat. At the present time. 2 *Bl. Com.* 166.

In *præsentia majoris potestatis*, minor potestas cessat. In the presence of the superior power, the inferior power ceases. *Jenk. Cent.* 214, c. 53. The less authority is merged in the greater.

IN PRENDER. L. Fr. In taking. A term applied to such incorporeal hereditaments as a party entitled to them was to take for himself; such as common. 2 *Steph. Com.* 23. 3 *Bl. Com.* 15.

IN PRIMIS. L. Lat. In the first place. *Mag. Cart. Johan.* c. 1.

IN PRINCIPIO. Lat. At the beginning. *Bract.* fol. 347 b.

IN PROPRIA PERSONA. Lat. In proper person; in one's own person. *Sive in propria persona litigaverit, sive per atturatum*; whether he litigate in proper person, or by attorney. *Bract.* fol. 370. See *Fleta*, lib. 2, c. 62, § 3.

IN QUINDENA. L. Lat. In fifteen days. One of the return days in the old practice of the English courts. *Towns. Pl.* 141. 2 *Reeves' Hist. Eng. Law*, 57—61.

IN QUINQUE SEPTIMANAS. L. Lat. In five weeks. One of the old returns. *Towns. Pl.* 142.

In *quo quis delinquit, in eo de jure est puniendus*. In whatever thing one offends, in that is he rightfully to be punished. *Co. Litt.* 233 b. *Wingate's Max.* 204, max. 58. The punishment shall have relation to the nature of the offence.

IN QUOVIS. Lat. In whatever. Assurance *in quovis*, i. e. in whatever ship laden. *Emerig. Tr. des Ass.* ch. 6, sect. 5.

**IN RE.** Lat. In a thing, or matter; in the matter. *In re A. B.*; in the matter of A. B. Papers in judicial proceedings other than actions are sometimes so entitled.

**In re dubia, benigniorem interpretationem sequi, non minus justius est quam tutius.** In a doubtful matter, to follow the more liberal interpretation is not less the juster than the safer course. *Dig.* 50. 17. 192. 1 This maxim is taken from Marcellus' 29th book of Digests, extracted in *Dig.* 28. 4. 3, where the whole context may be seen.

**In re dubia, magis inficiatio quam affirmatio intelligenda.** In a doubtful matter, the denial or negative is to be understood, [or regarded,] rather than the affirmative. *Godb.* 37.

**In re pari, potiorum causam esse prohibentis constat.** In a thing equally shared [by several] it is clear that the party refusing [to permit the use of it] has the better cause. *Dig.* 10. 3. 28. A maxim applied to partnerships, where one partner has a right to withhold his assent to the acts of his co-partner. 3 *Kent's Com.* 45.

**IN REBUS.** Lat. In matters, things, or cases. **In rebus manifestis, errat qui auctoritates legum allegat; quia perspicue vera non sunt probanda.** In clear cases, he mistakes who cites legal authorities, for obvious truths are not to be proved. 5 *Co.* 67 a, *Jeffrey's case*. Applied to cases too plain to require the support of authority; "because," says the report, "he who endeavors to prove them obscures them."

**IN REM.** Lat. Against a thing; for the recovery of a thing. *Inst.* 4. 6. 1. *Fleta*, lib. 2, c. 60, § 21. *Story*, J. 2 *Gallison's R.* 191, 197. *Story on Bailm.* § 607. *Wayne*, J. 7 *Howard's R.* 729, 735. 1 *Cushing's R.* 29. Proceedings *in rem* are peculiar to courts of admiralty. "The foreign and other attachments of property, in the state courts, though, by analogy, loosely termed proceedings *in rem*, are evidently not within the category." *Grier*, J. 19 *Howard's R.* 89. And see 1 *Kent's Com.* 379, 380, notes.

**IN RENDER.** L. Fr. In yielding or paying. Rent is said by the ancient lawyers to *lie in render*, in contradistinction to other corporeal hereditaments which *lie in prender*. 2 *Steph. Com.* 23. See *In prender*.

**In re publica maxime conservanda sunt jura belli.** In a state, the laws of war are to be especially upheld. 2 *Inst.* 58. Used

by Lord Coke, in commenting on *Magna Charta*, c. 30.

**IN RERUM NATURA.** L. Lat. In the nature of things; in existence; not a fictitious person. In pleading, to say that there is no such person *in rerum natura*, is the same as to say that the party named is a fictitious person. 3 *Bl. Com.* 301. The phrase is applied, in the civil law, to things. *Inst.* 2. 20. 7.

**IN RESPECTU.** L. Lat. In respite. *Ponitur assisa in respectu*; the assise is put in respite, i. e. is respited. *Bract.* fol. 256. *Fleta*, lib. 5, c. 3, § 4. *Yelv.* 97.

**In restitutionem, non in penam, hæres succedit.** The heir succeeds to the restitution, not to the penalty; an heir may be compelled to make restitution of a sum unlawfully appropriated by the ancestor, but is not answerable criminally, as for a penalty. 2 *Inst.* 198.

**IN RETALLIA.** L. Lat. In retail; by retail. *Reg. Orig.* 184.

**IN ROBERIA.** L. Lat. In or by robbery. *Bract.* fol. 146 b. Formal words in the ancient appeal of robbery. *Id. ibid.*

**IN SCRINIO JUDICIS.** L. Lat. In the writing-case of the judge; among the judge's papers. "That is a thing that rests *in scrinio judicis*, and does not appear in the body of the decree." *Hardr.* 51.

**IN SEPARALI.** L. Lat. In several; in severalty. *Fleta*, lib. 2, c. 54, § 20.

**IN SEYSINA.** L. Lat. In seisin; in actual possession of lands. *Bract.* fol. 252, *et seq.* Expressed in law French, by the simple word *eins*, of which the English "*in*" is a mere translation. *Tenere se in seysina*; to hold himself in seisin; to maintain his possession. *Bract.* fol. 252 b. *Se ponere in seysinam*; to put himself into seisin. *Id.* fol. 252.

**IN SIMPLICI PEREGRINATIONE.** L. Lat. In simple pilgrimage. *Bract.* fol. 338. A phrase in the old law of essoins. See *In generali passagio*.

**IN SIMPLUM.** Lat. For the simple or single value. *Inst.* 4. 6. 22. *Bract.* fol. 103.

**IN SOLIDO.** Lat. [Fr. *solidairement*.] For the whole, (*pro toto*, q. v.;) to, or for the full amount; jointly and severally. A common term in the law of partnership and the civil law of contracts. 3 *Kent's Com.* 32, 34, 156, 164. A contract *in solido* is one by which each party is bound severally as well as jointly, and by which each is

liable for the whole. *Civil Code of Louis.* Art. 2077. Marshall, C. J. 7 *Peters' R.* 413, 429. An obligation *in solido* is a joint and several obligation. *Burge on Suretyship*, 391. *Schmidt's Civ. Law*, 117. *Poth. Obl.* part 1, ch. 3, art. 8, sec. 1. The terms "creditor *in solido*," "debtor *in solido*," are common in the civil law. *Burge, ub. sup.* In the Roman civil law, *in solidum* (q. v.) is the more common expression. And see *Pro solido*.

**IN SOLIDUM.** Lat. For the whole. *Si plures sint fidejussores, quotquot erunt numero, singuli in solidum tenentur*; if there be several sureties, however numerous they may be, they are individually bound for the whole debt. *Inst.* 3. 21. 4. *In parte, sive in solidum*; for a part, or for the whole. *Id.* 4. 1. 16. See *Id.* 4. 6. 20. *Id.* 4. 7. 2. "In joint contracts, all are bound to answer *in solidum*." Lord Mansfield, 1 *W. Bl.* 388.

As a whole; exclusively; to the exclusion of others. *Plures eandem rem in solidum possidere non possunt*. Several persons cannot possess the same thing exclusively, [or so that both have the whole property in it at the same time.] *Dig.* 41. 2. 3. 5.

**Duorum in solidum dominium vel possessio esse non potest.** There cannot be an ownership or possession by two persons of the whole of one thing at the same time. *Dig.* 13. 6. 5. 15. 1 *Mackeld. Civ. Law*, 245, § 236. In Bracton, this phrase of the civil law is used as one word, *insolidum*. *Bract.* fol. 28 b. *Non dominus in solidum, sed tamen dominus in communi*; not owner of the whole exclusively, but yet owner in common. *Id.* fol. 167. And in another passage, it occurs very expressively as an adverb, *insolidè*, (q. v.) *Id.* fol. 45.

**IN SOLO.** Lat. In the soil or ground. *In solo alieno*; in another's ground. *In solo proprio*; in one's own ground. 2 *Steph. Com.* 20.

**IN SPECIE.** Lat. In shape or form; in the same form; in precise form; specifically; identically. Performance *in specie*; specific performance. 1 *Rep. in Ch.* 160.

**In stipulationibus id tempus spectatur quo contrahimus.** In stipulations, the time when we contract is regarded. *Dig.* 50. 17. 144. 1.

**In stipulationibus, quum quæritur quid actum sit, verba contra stipulatorem interpretanda sunt.** In stipulations or contracts, when there arises a question as to what

was actually done, the words are to be interpreted against the stipulator. *Dig.* 45. 1. 38. 18. And see *Id.* 45. 1. 99, pr. *Broom's Max.* [461.]

In the case of Hogg's Appeal, (22 *Penn. St. R.* 479, 485,) it was said by Lowrie, J. that "when this rule was transferred from the Roman law to ours, the reason of it was left behind, and this has seriously affected its value. That reason interpreted obscurities and ambiguities against the party who defined or wrote down the terms, because the fault was his." In the Roman law, the parties to contracts were called *stipulator* and *promissor*; the *stipulator* proposed the terms of the contract, the *promissor* simply accepted them; although he was in fact the party who contracted the obligation. The rule was to interpret in favor of the promissor, and against the stipulator, because the latter was free to choose such terms as he pleased. *Secundum promissorem interpretamur, quia stipulatori liberum fuit verba late concipere.* *Dig.* 45. 1. 99, pr.

**IN STIRPES.** Lat. To, by, or according to the roots or stocks; as representatives of stocks; with reference to the stocks from which parties are descended, and not to themselves as individuals, (or *capita*.) A term derived from the ancient Roman law of succession, and still frequently applied to cases where, in the distribution of estates, persons take the share which their parent, (the *stirps*, stock or root whom they represent,) would have done, had he been living. 2 *Bl. Com.* 217.

Τοσοῦτον ἐκ τῆς κληρονομίας τοῦ τελευτήσαντος λαμβάνοντες μέρος, ὅσοι δὴποτε ἂν ᾤσον ὅσον ὁ αὐτῶν γοιεύς ἐκ περιῆν, ἐκομίστο· ἢν τίνα διαδοχὴν in stirpes ἢ ἀρχαίου ἐκάλειεν; taking such a share of the inheritance of the deceased, (how numerous soever they may be,) as their parent, if living, would have had; which antiquity [i. e. the old law] called succession *in stirpes*. *Nov.* 118, c. 1. See *Stirpes*.

**IN STRICTO JURE.** Lat. In strict law; in strict right. See *Stricti juris*.

**IN SUBSIDIUM.** L. Lat. In aid.

**IN SUBSTANTIALIBUS.** L. Lat. In a material point. Lord Lyndhurst, 6 *Bell's Appeal Cases*, 171. Of a substantial nature. 7 *Wils. & Shaw R.* 103.

**IN SUMMA.** L. Lat. On the whole; to sum all up. *Fleta*, lib. 2, c. 60, § 19.

**In suo quisque negotio hebetior est quam in alieno.** Every one is more dull in his own business than in another's. Lord

Coke cites this saying as illustrating the reason of his observation "that it is not safe for any man (be he never so learned) to be of counsel with himself in his own case, but to take advice of other great and learned men." *Co. Litt.* 377 b.

**IN SUPERFICIE.** Lat. In the surface. "His interest is *in superficie*, not *in profundo*." *Bacon's Arg.* case of Impeachment of Waste, *Works*, iv. 217.

**IN SUSPENSO.** L. Lat. In suspense. *Bract.* fol. 12, 357 b. *Fleta*, lib. 6, c. 10, § 6.

**IN TAM AMPLO MODO.** L. Lat. In as ample a manner. 7 *East*, 325.

**IN TANTUM.** L. Lat. In so much; so much; so far; so greatly. *Reg. Orig.* 97, 106.

**IN TERMINIS.** L. Lat. In terms. *Burr. Sett. Cas.* 286.

**IN TERMINIS TERMINANTIBUS.** L. Lat. In terms of determination; exactly in point. 11 *Co.* 40 b, *Metcalf's case*. In express or determinate terms. 1 *Leon*, 93.

**IN TERROREM.** Lat. In or for terror; by way of threat or menace; for the purpose of terrifying or deterring. 2 *Inst.* 529. "Restraint of marriage was only *in terrorem*." 1 *P. Wms.* 284. See *Id.* 653.

**IN THE NAME OF GOD, AMEN.** A solemn formula with which wills and testaments once almost invariably commenced, though now in many cases disused. Bills of exchange also formerly commenced in the same way. *Story on Bills*, § 26. note, citing *Scaccia de Camb.* § 1, Quest. 5. And some policies of insurance continue to retain the same form of invocation. 2 *Duer on Ins.* 71, 797. See *In nomine Dei, Amen*. The compact on board the Mayflower, Nov. 11, 1620, begins *In the name of God, Amen*.

**IN TOTIDEM VERBIS.** Lat. In so many, or just so many words. *Hale's Hist. Com. Law*, 101.

**IN TOTO.** Lat. In the whole; altogether. *In toto vel in parte*; in whole or in part. *Fleta*, lib. 4, c. 18, § 1.

**In toto et pars continetur.** In the whole, the part also is contained. *Dig.* 50. 17. 113.

**In traditionibus scriptorum, non quod dictum est, sed quod gestum est, inspicitur.** In the delivery of writings, not what is said, but what is done is looked to. The actual delivery of a writing sealed to the party,

without any words, is a good delivery. 9 *Co.* 137 a, *Thoroughgood's case*.

This maxim has been strangely translated in Branch's *Principia* and Wharton's *Lexicon*, "In the traditions of writers," &c.; the mistake appearing to have arisen from taking *scriptorum* to be the genitive of *scriptores*, instead of *scripta*.

**IN TRANSITU.** L. Lat. In transit; on the way or passage; while passing from one person or place to another. 1 *Kent's Com.* 35. 2 *Id.* 540—552. See *Stoppage in transitu*.

On the voyage. 1 *Rob. Adm. R.* 338. 5 *Id.* 131.

**IN TRAJECTU.** Lat. In the passage over; on the voyage over. See Sir William Scott, (*The Daifjee*), 3 *Rob. Adm. R.* 141.

**IN TUTO.** L. Lat. In safety. See *Interest reipublicæ ut carceres sint in tuto*.

**IN UNUM ANNUM ET UNUM DIEM.** L. Lat. For one year and one day; for a year and a day. *Reg. Orig.* 8 b.

**IN VADIO.** L. Lat. In gage or pledge. 2 *Bl. Com.* 157.

**IN (or EN) VENTRE SA MERE.** L. Fr. In its mother's womb. *Is qui in ventre portabatur.* *Cod.* 6. 29. 3. *Quæ adhuc in ventre vehitur materno.* *Id.* 7. 4. 14. An infant *in ventre sa mere* is supposed in law to be born, for many purposes. 1 *Bl. Com.* 130.

**IN VINCULIS.** Lat. In chains; in actual custody. *Gilb. For. Rom.* 97.

Applied also, figuratively, to the condition of a person who is compelled to submit to terms which oppression and his necessities impose on him. 1 *Story's Eq. Jur.* § 302.

**IN VITA.** L. Lat. In life; alive. See *En vic*.

For life. *Bract.* fol. 13 b.

"INABILITY" of a ship to execute or proceed on a service, may fairly be taken to mean not only an inability in respect of the tackle and hull of the ship, but also, for want of a sufficient crew to navigate her. Lawrence, J. 3 *East*, 249.

**INACTITARE.** L. Lat. In old English law. To enact. *Inactitatus, inactitatum*; enacted. *Reg. Brev.* Appendix, 36. 3 *Salk.* 331. *Frcem.* 75.

**INADEQUACY OF PRICE.** Want of a sufficient consideration for a thing sold. Sometimes a sufficient ground for the avoidance of a contract of sale. See 2 *Kent's Com.* 477, note.

**INÆDIFICATIO.** Lat. In the civil law. Building on; the building on another's land, with one's own materials; building on one's own land with another's materials. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, §§ 362, 363. 1 *Mackeld. Civ. Law*, 283, § 268.

**INANTEA.** L. Lat. From this day forth. *Spelman.*

**INBENEFICIARE.** L. Lat. In old European law. To give land as a benefice, or in fee. *Spelman.* See *Beneficium.*

**INBLADARE.** L. Lat. [from *in*, and *bladum*, grain.] In old English law. To plant or sow. *Spelman.* *Quo blado inbladata fuerint*; with what grain they were sown. *Fleta*, lib. 2, c. 41, § 1.

*Inbladatio.* Sowing. *Id. ibid.*

**INBLAURA.** L. Lat. In old records. Profit or product of ground. *Cowell.*

**INBORII, Inborow.** Sax. [from *in*, and *borh*, a pledge.] In old English law. A pledge for persons going in. *Inborh & outborh*; a pledge for persons going in and out. This is the interpretation of Blount, but Cowell, following Camden, gives a different one.

**INBREVIARE.** L. Lat. [from *in*, in, and *brevis*, short.] In old English practice. To take a short account in writing; to inventory. *Attachiare et inbreviare catalla defuncti inventa in laico feodo*; to attach and inventory the chattels of the deceased found in a lay fee. *Mag. Cart.* 9 *Hen.* III. c. 18. *Id. Johan.* c. 26. Other MSS. read *imbreviare*, (q. v.)

**INCAPACITY.** Want of capacity; want of power or ability to take or dispose; want of legal ability to act. See *Capacity.*

**INCAUSTUM, Encaustum.** Lat. Ink. A fluid anciently used for writing, of which, as appears from the following passage of Bracton, there were two kinds: the black, (*incaustum nigrum*,) and the red, (*incaustum rubrum*,) the former being also termed *atramentum*, (from *ater*, black,) which is the Latin word generally used for "ink." *Item diversitas incausti et atramenti, ut si una pars scribatur incausto nigro, et altera pars incausto rubro, non atramento.* *Bract.* fol. 398 b.

\* \* The original form of this word was the Græco-Lat. *encaustum*, from Gr. *ἐν*, in, or upon, and *καυστικός*, burnt, or burning, (hence *caustic*,) from *καίειν*, to burn; which is used by Pliny as descriptive of a kind of painting executed by fire or heat. See

*Encyclopedia Americana*, tit. *Encaustic painting*. In the civil law, however, it occurs in the sense of a writing fluid. The ink with which the imperial rescripts were signed, was of a purple color, obtained from the juices of a shell-fish called *murex*, and the powder of another shell-fish called *conchylium*, by the application of fire, or heat; (*ut cocti muricis et triti conchylii ardore signentur*.) In the Code of Justinian it is called *sacrum encaustum*, and the making of it for common uses, or by common persons, was prohibited under the penalty of death and confiscation of goods. *Cod.* 1. 23. 6. *Incaustum*, also, was occasionally used in the later civil law, and, as already mentioned, is the form adopted by Bracton. The law French "*enke*," which occurs in Britton, (c. 28,) seems to have been framed directly from *encaustum*, by mere abbreviation, and the English "*ink*" is merely the French word with a different initial, in which respect the form *incaustum* is followed.

**INCENDIARY.** [from Lat. *incendium*, a burning.] In criminal law. One who wilfully and maliciously sets fire to another's house. Anciently termed *ardour*, (q. v.) a burner.

**INCENDIUM.** Lat. [from *incendere*, to burn.] In the civil law. A fire; a conflagration. *Dig.* 47. 9. *Incendium ære alieno non exuit debitorem*. A fire does not release a debtor from his debt. *Cod.* 4. 2. 11.

**INCERTA.** Lat. [fem. sing. and neut. pl. of *Incertus*, q. v.] Uncertain; doubtful. *Incerta persona*; an uncertain person; a person not particularly named or designated. *Inst.* 2. 20. 25.

*Incerta pro nullis habentur*. Uncertain things are held for nothing. *Davies' R.* 33.

**INCERTI TEMPORIS.** Lat. Of uncertain time or date. A title given to some English statutes enacted between Magna Charta and the reign of Edward III.; their period not being ascertained. 2 *Reeves' Hist. Eng. Law*, 85, 312. *Incerti nominis et temporis*; of uncertain name and date. Cases in the old reports are sometimes so entitled. *Hob.* 2.

**INCERTITUDO.** L. Lat. [from *incertus*, q. v.] In old English law. Uncertainty. *Fleta*, lib. 4, c. 17, § 1.

**INCERTUS, Incerta, Incertum.** Lat. [from *in*, priv. and *certus*, certain.] Uncertain; doubtful; not known. *Incertus possessor est quem ignoramus*; an uncer-

tain possessor is one whom we know not. *Dig.* 50. 16. 39. 3.

**INCEST.** [Lat. *incestus, incestum*, from *in*, not, and *castus*, chaste.] In criminal law. Sexual intercourse between persons who, by reason of consanguinity or affinity, cannot lawfully be united; (*coitus illicitus inter eas personas quæ, ob consanguinitatem vel adfinitatem, conjungi non possunt.*) *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 18, § 1352. See 2 *Kent's Com.* 81, 82, *et seq.* *Lewis' U. S. Crim. Law*, 436.

**INCHOATE.** [from Lat. *inchoatus*, from *inchoare*, to begin.] Begun; commenced; incipient; incomplete. A term applied to dower, as *initiate* (q. v.) is to curtesy.

**INCIDENT.** [Lat. *incidens*, from *incidere*, (q. v.) *accessorium*.] Belonging or appertaining to; following; depending upon another thing as more worthy or principal.\* *Co. Litt.* 151 b. *Termes de la Ley.* Used both as an adjective and substantive. 1 *Steph. Com.* 291. Things incident are adherent to their principals. *Wingate's Max.* 127, max. 41. Things incident cannot be severed. *Finch's Law*, b. 1, ch. 3, num. 12. Estovers or wood granted to be burnt in such a house, shall go to him that hath the house, by whatsoever title, for one is inseparably incident to the other. *Id.*

A thing may be necessarily and inseparably incident to another, or usually so. In England, a court baron is necessarily incident to a manor, and a court of piepowders to a fair, so that they cannot be severed by grant. *Termes de la Ley.* The usual incidents to reversions are fealty and rent. 1 *Steph. Com.* 291. To every estate in lands the law has annexed certain peculiar incidents, which appertain to it as of course, without being expressly enumerated. 1 *Hilliard's Real Prop.* 91.

**INCIDENTALITER.** L. Lat. Incidentally. *Bract.* fol. 247 b.

**INCIDERE.** Lat. [from *in*, into or upon, and *cadere*, to fall.] In the civil and old English law. To fall into. *Calv. Lex. Brissonius.*

To fall out: to happen; to come to pass. *Calv. Lex.*

To fall upon or under; to become subject or liable to. *Incidere in legem*; to incur the penalty of a law. *Brissonius. Quibus modis quis incidat in assisam*; in what ways a person may become liable to an assise. *Bract.* fol. 170 b, 171. *Incidere in misericordiam*; to fall into mercy; to

become liable to amercement. *Fleta*, lib. 2, c. 44, § 2.

**INCILE.** Lat. In the civil law. A trench. A place sunk by the side of a stream, so called because it is cut (*incidatur*) into, or through the stone or earth. *Dig.* 43. 21. 1. 5. The term seems to have included ditches (*fossæ*) and wells, (*putei*.) *Id. ibid.*

**INCIPITUR.** L. Lat. [from *incipere*, to begin.] (It is begun; it begins; a beginning.) A term applied, in English practice, to an entry made upon the roll in an action at law, by giving merely the commencement of the pleadings or other proceedings, instead of entering them in full. 1 *Arch. Pr.* 177. 3 *Ad. & Ell. N. S.* 425. 2 *Tidd's Pr.* 734.

**INCISED WOUND.** In medical jurisprudence. A cut or incision on a human body; a wound made by a cutting instrument, such as a razor. *Burr. Cic. Evid.* 693. *Whart. & Stille's Med. Jur.* § 808.

**INCIVILE.** Lat. [from *in*, not, and *civile*, proper or lawful.] Against legal propriety, rule or order, (*contra juris ordinem*;) irregular; unusual, (*inusitatum*;) unbecoming, (*inconveniens*;) unjust, (*iniquum*.) *Calv. Lex.*

*Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare, vel respondere.* It is improper, without looking at the whole of a law, to give judgment or advice, upon a view of any one clause of it. *Dig.* 1. 3. 24.

*Incivile est, nisi tota sententia inspecta, de aliqua parte judicare.* It is irregular, or legally improper, to pass an opinion upon any part of a sentence, without examining the whole. *Hob.* 171 a. This seems to be a modification of the last maxim.

**INCLAMARE.** L. Lat. [from *in*, to or upon, and *clamare*, to cry.] In old European law. To cry out for a person, as a crier does in court;\* to summon to court. *Inclamatus*; proclaimed; called or summoned by proclamation, (*in jus exactus*.) *Edict. Theodoric.* c. 145. *Spelman.*

**INCLAUSA.** L. Lat. In old records. A home close, or enclosure near the house. *Paroch. Antiq.* 31. *Cowell.*

**INCLAUSTRUM.** L. Lat. In old English law. An enclosure; the enclosure or circuit of a monastery. *Spelman.*

**INCLOSE.** To shut up. "To inclose a jury," in Scotch practice, is to shut them up in a room by themselves. *Bell's Dict.* voc. *Criminal prosecution.*

**INCLUSIO.** Lat. [from *includere*, to shut in, enclose, include.] In the civil law. A shutting in; an enclosing or including; inclusion; the setting of a gem. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 363.

A shutting up, as of bees in a hive. *Fleta*, lib. 3, c. 2, § 3. A shutting up in a prison. *Id.* lib. 2, c. 65, § 7.

**Inclusio unius est exclusio alterius.** The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. 11 Co. 58 b, *Foster's case*.

**INCOLA.** Lat. [from *incolere*, to inhabit, to dwell in.] In the civil law. An inhabitant; a dweller or resident. Properly, one who has transferred his domicile to any country; the same with the Greek *παροικος*. (*Incola est qui in aliquam regionem domicilium suum contulit, quem Græci παροικον appellant.*) *Dig.* 50. 16. 239. 2. See *Id.* 50. 1. 34, 35, et per tot. One who comes from abroad, and takes up his abode in a place, with the view of residing there. The peculiar sense of the word seems to be derived from the component particle *in*, having the sense of *into*, or *entry*.\* Domicil made a person an *incola*, as birth made him *civis*, (a citizen.) *Cod.* 10. 40. 7. *Phillimore on Domicil*, 25, 26. See *Calv. Lex*.

In old English law. A subject. *Stat. Marlbr. pr.* *Fleta*, lib. 2, c. 47, § 13.

**INCOME.** In a strict sense,—that which comes in, or is received from any business or investment of capital, without reference to the outgoing expenditures. *Profits* generally mean the gain which is made upon any business or investment, when both receipts and payments are taken into the account. *Bronson, J.* 4 *Hill's* (N. Y.) *R.* 20, 23.

In a looser sense, income is used as synonymous with profits. *Id. ibid.*

**INCOMMODUM.** Lat. [from *in*, priv. and *commodum*, advantage.] In the civil and old English law. Disadvantage; loss. The opposite of *commodum*, (q. v.)

**INCOMPATIBLE.** Legally inconsistent; that cannot be legally united in the same person. A term frequently applied to offices.

**INCOMPETENCY.** In the law of evidence. Want of competency. See *Competency*.

**INCONCLUSIVE.** In the law of evidence. Not conclusive; that may be disputed or rebutted. A term applied to

presumptions. See *Burr. Circ. Evid.* 47, 48. *Best on Pres.* § 25. 1 *Greenl. Evid.* §§ 33, 34.

**INCONSULTO.** Lat. [from *in*, and *consulto*, advisedly.] In the civil law. Unadvisedly; unintentionally. *Dig.* 28. 4. 1.

**INCONTINENT.** L. Fr. Forthwith. *Litt.* sect. 127.

**INCONTINENTI.** Lat. Forthwith; immediately; without any interval; incontinently. *Ejicio te, et tu me incontinenti, flagrante disseysina*; I eject you, and you immediately, while the disseisin is fresh, [eject] me. *Bract.* fol. 163 b. See *Id. ibid.* and fol. 164, *passim.* *Id.* fol. 12 b. *Pacta incontinenti apposita insunt contractibus, et legum dant eis*; covenants put into contracts at the time they are made, are considered as inherent parts of them, and give law to them. *Id.* fol. 22 b.

In the civil law, this word did not always import instantaneous succession, (*ad punctum, ad momentum*;) but admitted of the existence of a moderate interval. *Calv. Lex.* So *Fleta* uses the expression, *satis erit incontinenti.* Lib. 4, c. 2, § 2.

**INCORPORALIS.** Lat. [from *in*, priv. and *corporalis*, corporeal.] In civil and old English law. Incorporeal; not material; not having a body or substance; that cannot be touched nor seen, (*quæ tangi non potest, nec videri.*) *Bract.* fol. 13 b. *Res incorporales*; incorporeal things, such as rights, obligations, actions, &c. *Id.* fol. 7 b, 10 b. *Fleta*, lib. 2, c. 60, § 18. *Inst.* 2. 2.

**Incorporalia bello non adquiruntur.** Incorporeal things are not acquired by war. Lord Ellenborough, 6 *M. & S.* 104.

**INCORPORAMUS.** L. Lat. [from *incorporare*, q. v.] We incorporate. One of the words by which a corporation may be created in England. 1 *Bl. Com.* 473. 3 *Steph. Com.* 173. See *Incorporare*.

**INCORPORARE.** L. Lat. [from *in*, into, and *corpus*, a body.] In old English law. To give a body to; to clothe with a body; to gather into a body; to incorporate. In *The Case of Sutton's Hospital*, this word was held not requisite in law to create an incorporation, other equivalent words being sufficient. 10 Co. 30 a.

**INCORPORATION.** [L. Lat. *incorporatio*, from *incorporare*, q. v.] The forming into a body, (*corpus*;) the creation of a corporation, or artificial body having perpetual succession. See *Corporation*.

**INCORPOREAL.** [L. Lat. *incorporalis*.]

Having no body, or *corpus*; not material, or tangible; not an object of sense, but existing only in contemplation of law; not capable of actual visible seisin, or possession.\* 1 *Chitt. Gen. Pract.* 150, 203.

**INCORPOREAL CHATTELS.** A class of incorporeal rights growing out of, or incident to things *personal*; such as patent rights, and copyrights. 2 *Steph. Com.* 72.

**INCORPOREAL HEREDITAMENT.** [L. Lat. *incorporale hereditamentum*.] In a large sense—any possession or subject of property, whether real or personal, capable of being transmitted to heirs, and not the object of the bodily senses. 2 *Steph. Com.* 1. 1 *Id.* 159. See *Hereditament, Incorporeal*.

In a stricter sense,—a right annexed to, or issuing out of, or exercisable within a corporeal hereditament, or land. 2 *Bl. Com.* 17, 19. 2 *Steph. Com.* 2. 1 *Id.* 159. The term *incorporeal hereditament* is, in effect, exclusively applied to the class of things *real*. Thus, a man may have a right of common of pasture for his cattle, or a right of way, (which are incorporeal hereditaments,) to be exercised over the land (which is corporeal) of another person. 2 *Steph. Com.* 2. 3 *Kent's Com.* 402.

*Corporeal* hereditaments consist of such as affect the senses, such as may be seen and handled by the body; *incorporeal* are not the object of sensation, can neither be seen nor handled, are creations of the mind, and exist only in contemplation. 2 *Bl. Com.* 17. Incorporeal hereditaments, according to Blackstone, are principally of ten sorts: advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents. 2 *Bl. Com.* 21. Mr. Stephen adds to these, water-courses and lights, but makes of the whole a different arrangement. 2 *Steph. Com.* 3. In American law there are fewer kinds of this description of property, the only incorporeal rights recognised being those of commons, ways, easements and aquatic rights, offices, franchises, annuities and rents. 3 *Kent's Com.* 402, 403.

**INCORRIGIBLE ROGUE.** A species of rogue or offender, described in the statutes 5 Geo. IV. c. 83, and 1 & 2 Vict. c. 38. 4 *Steph. Com.* 309.

**INCREASE.** Produce of land.

Offspring or issue of animals. "Increase" of a female slave has no broader meaning than children. 3 *Jones' Law R.* 473.

**INCREMENTUM.** Lat. In old Eng-  
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lish law and practice. Increase; addition; an advance in rent; an additional payment. *Paroch. Antiq.* 164, 316. *Cowell.* Costs *de incremento*; costs of increase. See *De incremento*.

A parcel of land enclosed out of common or waste ground. *Dedi J. B. quoddam incrementum terræ meæ apud D. &c.*; I have given to J. B. a certain enclosed parcel of my land at D. &c. *Blount*.

Increase of land by the sea. See *Maritima incrementa*.

**INCROCARE.** L. Lat. [from *in*, upon, and Fr. *croc*, a hook.] In old European law. To suspend from a hook, (*ab unco pendere*;) to hang. *Spelman.* *Si quis hominem, sine consensu judicis, de ramo ubi incrocatur, deponere præsumpserit, &c.*; if any one shall presume, without consent of the judge, to take down a man from the branch where he is hung, &c. *L. Salic.* tit. 69, § 2.

**INCROCH.** [L. Lat. *incrochiare*, from L. Fr. *encrocher*, q. v.] In old English law. To draw to one, as with a hook, (*velut hamâ subducere*;) to usurp. Hence the modern *encroach*. "Admirals and their deputies do *incroch* to themselves divers jurisdictions." *Stat.* 15 *Rich.* II. c. 3. *Blount*. See *Encroach*.

**INCULPATE.** [from Lat. *in*, and *culpa*, blame.] To impute blame or guilt; to accuse.

**INCULPATORY.** In the law of evidence. Going, or tending to establish guilt; intended to establish guilt; criminative. *Burr. Circ. Evid.* 251, 252.

**INCUMBENT.** [Lat. *incumbens*, from *incumbere*, to lie or be upon; to bend over, to bend to.] In English ecclesiastical law. A clerk who is resident on his benefice, with cure; and called *incumbent* of that church, because he does or ought to *bend* all his study to the discharge of the cure. *Co. Litt.* 119 b. *Cowell.* *Blount*. The law styles every parochial minister an *incumbent*, upon the supposition that he always *resides upon* his benefice. 1 *Bl. Com.* 392. 3 *Steph. Com.* 83.

This word is now applied to civil officers, as well as ecclesiastical, to denote the person in present possession of an office.

**INCUMBERE.** Lat. To lie or rest upon; to be upon. Hence *incumbent*, (q. v.) *incumber*. *Actori incumbit onus probandi*. The burden of proof rests on the plaintiff. 4 *Co.* 72 a.

To lie or bend over a thing, as one bends

over a task; to apply one's self vigorously. Coke derives *incumbent* from this sense also.

To possess or preserve; to hold fast or close. *Calv. Lex.*

**INCUMBRAMENTUM.** L. Lat. [from *incumbrare*, q. v.] In old English law. An incumbrance. *Bract.* fol. 261. *Fleta*, lib. 5, c. 4, § 16; c. 14, § 11.

**INCUMBRANCE.** [L. Lat. *incumbramentum*, q. v.] A burden or charge upon property; a legal claim or lien upon an estate; such as a judgment or mortgage.

**INCUMBRANCER.** One who holds an incumbrance, such as a mortgage, upon another's estate.

**INCUMBRARE.** L. Lat. [from *incumbere*, to lie upon?] In old English law. To incumber. *Agat versus eum qui incumbravit, ad tollendum incumbramentum*; he may have an action against him who incumbered, to remove the incumbrance. *Fleta*, lib. 5, c. 14, § 11.

**INCURRERE.** L. Lat. [from *in*, upon, and *currere*, to run.] To run or fall against, or into; to become subject or liable to; to incur. *Cowell.* Scotticè, *inrine*, in-run. *Incurramentum* is used in old records. *Cowell.*

**INDE.** L. Lat. Thereof; therefrom. *Quod eat inde sine die*; that he go thereof without day.

Thereof; thereupon. *Et inde producit sectam*; and thereof he produces suit, or brings suit. See *Et inde*, &c. *Si judicium inde redditum sit*; if judgment be thereupon given.

Thereof; of that thing. *In consideratione inde*; in consideration thereof. *Non constat quid inde venit*; it does not appear what became of it. *Hardr.* 65. A reporter's note.

Therefore. *Inde datæ leges ne fortior omnia posset*; laws are made to prevent the stronger from having the power to do everything. *Davies' R.* 36.

Therewith. *Consignando inde chartas vel brevias*; by sealing therewith charters or writs. *Bract.* fol. 119 b.

**INDEBITATUS.** L. Lat. Indebted. *Nunquam indebitatus*; never indebted. The title of the plea now substituted in England, for *nil debet*.

**INDEBITATUS ASSUMPSIT.** L. Lat. Being indebted, he undertook. The emphatic words of the old common counts in *assumpsit*, which, after stating for what the defendant was indebted to the plaintiff,

went on to state that, "*sic inde INDEBITATUS existens, idem W. in consideratione inde, postea, scilicet eodem die et anno supradicto, apud locum predictum, super se ASSUMPSIT, et eidem querenti adtunc et ibidem fideliter promisit,*" &c. Or, as literally translated in the modern forms,—"*being so indebted, the said W. [defendant,] in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff,*" &c. *Towns. Pl.* 415. 2 *Chitt. Pl.* 37.

The name given to that species of the action of assumpsit, in which the above description of count is employed, and in which the declaration consists substantially of two general allegations; first, of a *debt*, and then of a *promise*, in consideration of the debt; the promise, however, being usually not an express but an implied one. See 3 *Bl. Com.* 154, 155. 1 *Tidd's Pr.* 2. 1 *Chitt. Pl.* 341, *et seq.*

**INDEBITI SOLUTIO.** Lat. In the civil and Scotch law. The payment of what is not due; which, when made from ignorance or by mistake, might be recovered back by an action termed *condictio indebiti*. *Dig.* 12. 6. *Bell's Dict.*

**INDEBITUM.** Lat. [from *in*, priv. and *debitum*, due.] In the civil law. Not due, or owing. *Dig.* 12. 6. *Calv. Lex.*

**INDECIMABLE.** [L. Lat. *indecimabilis*, from *in*, priv. and *decimæ*, tithes.] In old English law. That which is not tithable, or liable to pay tithes. 2 *Inst.* 490.

**INDEFEASIBLE.** *Indefeisible.* That which cannot be defeated, undone, or made void.

**INDEFENSUS.** L. Lat. [from *in*, priv. and *defendere*, to deny.] In old English practice. Undefended; undenied by pleading. See *Undefended*.

A defendant who makes no defence or plea. *Fleta*, lib. 2, c. 61, § 6.

**INDEFINITE FAILURE OF ISSUE.** A failure of issue not merely at the death of the party whose issue are referred to, but at any subsequent period, however remote. 1 *Steph. Com.* 562.—A failure of issue whenever it shall happen, sooner or later, without any fixed, certain or definite period within which it must happen. 4 *Kent's Com.* 274. The period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without

reference to any particular time or any particular event. *Id. ibid.* See 14 *N. Hamp. R.* 215.

**INDEFINITE PAYMENT.** In Scotch law. Payment without specification. Indefinite payment is where a debtor, owing several debts to one creditor, makes a payment to the creditor, without specifying to which of the debts he means the payment to be applied. See *Bell's Dict.*

**INDEFINITUM.** L. Lat. Indefinite; undefined; without specification, or particular designation; in general terms.

**Indefinitum æquipollet universali.** The undefined is equivalent to the universal or whole. 1 *Ventr.* 368. Where reference is made to several parcels, in general terms, as "the said," it will be taken to include the whole. Thus, where a testator devised his lands in A. to his wife for life; Item, his lands in B. to his wife for life, and also his lands which he purchased of C. to his wife for life, and after the decease of his wife, he gave the said lands to one of his sons and his heirs, it was held that all the lands passed. *Id. ibid.* Another form of this maxim is, **Indefinitum supplet locum universalis.** The undefined or general supplies the place of the whole. *Branch's Princ.*

In *Hardr.* 310, Hale, C. B. says, "in the king's grants indefinite words do not import an absolute universality."

**INDEMNIFY.** [L. Lat. *indemnificare*, from *indemn*, harmless, and *facere*, to make.] To make or save harmless; to secure against loss or damage; to secure against future loss.\* "Insurance is a contract whereby, for a stipulated consideration, one party undertakes to indemnify the other against certain risks." 1 *Phillips on Ins.* 1.

To make good; to re-imburse to one what he has lost. *Webster.* To put one in the situation he was in, before sustaining a loss.\* See *Indemnity.*

In some of the old books, this word is written *indempnify*. 2 *Rep. in Ch.* 410.

**INDEMNIS.** Lat. [from *in*, priv. and *damnum*, loss or harm.] Without loss, damage or harm; harmless; unharmed.\* One who experiences no loss, or is affected by no loss; (*qui damnum non sentit, qui nullo damno adficitur.*) *Brissonius.*

**INDEMNITY.** [Lat. *indemnitas*, from *indemn*, q. v.] Security against loss; security against future loss; security against loss or liability from any future act or oc-

currence.\* "Insurance is universally considered to be a contract of indemnity." 1 *Phillips on Ins.* 4. The general principle that runs through the whole subject of insurance, is that of indemnity. 2 *Id.* 42. The indemnity proposed by insurance is, to put the assured in the situation he was in when the risk began. *Id. ibid.*

Security against loss or liability in consequence of an act already done, or any past occurrence.\* An act of indemnity, in English law, is one that is passed for the relief of those who have neglected to take certain necessary oaths, or to perform other acts required to qualify them for their offices and employments. *Holthouse. Wharton's Lex. Brande.*

In some of the old books, this word is written after the law Latin, *indempnity*. 2 *Rep. in Ch.* 410.

**INDEMPNIS.** L. Lat. The old form of writing *indemn*. *Towns. Pl.* 19. So, *indempnificatus* for *indemnificatus*.

**TO INDENT.** [L. Lat. *indentare*, from *in*, in, and *dens*, a tooth.] Literally, to make in teeth; to cut in the form of teeth.

In old conveyancing. To cut through parchment or paper in a line composed of a series of uniform points or angles like the teeth of a saw, (or what may be called a serrated line;) which was done through a space left for that purpose in the middle, between the two written parts of an instrument. To cut in a waving or undulating line. See *Indenture*.

In modern conveyancing. To cut the edge or margin of the paper or parchment on which an indenture is written; which is done at the top, in a waving or undulating line. To cut or notch the edge in a series of scallops, which is the more common practice, both being modifications of the old indented or serrated line. See *Indenture*.

To bind by indenture or contract; to bind as an apprentice. *Indented*; bound by indenture. *Webster.*

**INDENT.** In American law. A certificate or indented certificate issued by the government of the United States at the close of the Revolution, for the principal or interest of the public debt. *Webster. Mr. Hamilton's Report on Public Credit, Jan. 9, 1790.*

This word is used in the acts of Congress of April 30, 1790, sess. 2, chap. 9, § 14, and March 3, 1825, sess. 2, chap. 65, § 17, and was construed in the case of the United

States v. Irwin, 5 *McLean's R.* 178. In this case, the court (Leavitt, J.) quoted and adopted the definition of Webster, and held that a military land warrant was not an indent. *Id.* 183. The word itself seems to be no longer in use.

INDENTURE. [L. Fr. *indenture*, *fait endent*; L. Lat. *indentura*, *scriptum indentatum*, *scriptura indentata*, (a writing indented,) *charta indentata*, (a deed indented,) *literæ indentatæ*, (letters indented;) Gr. *σύγγραφον*, *σύγγραφη*.] In ancient conveyancing. A writing containing a conveyance, bargain, contracts, covenants or agreements between two or more, and *indented* in the top or side, answerable to another that likewise comprehends the self-same matter. *Co. Litt.* 229 a.—An instrument executed in parts, that is, consisting of the same matter written twice on the same sheet, with a space between, where, after execution, the parchment was cut through, *divided*, (hence the name *dividenda*, q. v.) or *indented*, (i. e. cut in a serrated line, whence the name *indenture*,) and a part delivered to each of the parties. Sometimes termed “a pair of indentures.” 3 *Leon.* 69. 2 *Id.* 130.

\* \* Before the *indenting* of deeds (or *charters*, as they were formerly called,) came into use, when there were more parties than one interested in them, there were as many parts of them taken as there were parties interested, and one part was delivered to each of the parties. These multiplied parts were called *chartæ pariclae* or *pariculæ*, a barbarous term importing that they were *equal* or *alike* in all respects, (*in omnibus pariles*.) *Spelman*, voc. *Paricla*. *Butler's Note*, 138, lib. 3, *Co. Litt.* Instead of this method, (which resembles that now in use,) the practice was afterwards introduced, of writing the several parts of which the deed was to be composed, on the *same sheet* of parchment, leaving between the parts a space where a sentence was written or figure drawn, through which, after execution, the parchment was *cut* or divided into as many parts as there were parties. This prevailed as early as the times of the Saxons, the cuts or divisions being made in *straight* lines. Afterwards the word CYROGRAPHUM, or CHIROGRAPHUM, (q. v.) was substituted for the intermediate sentence or figure, and the cut made through it, in a line composed of a series of points or angles resembling the *teeth* (*dentes*) of a

*saw*, and from this *indented* or *serrated* line, these instruments came to receive the name of *indentures*, which is retained to this day. This practice of *indenting*, according to Mr. Butler, began with the lawyers as early as the reign of King John, and is substantially continued in modern conveyancing, though the indenting is no longer made on an *intermediate* line, but only on the *edge* of the paper or parchment, at the top of the instrument, and usually in a *waving* or scalloped line, instead of the original *indented* form.

INDENTURE. In modern conveyancing. A deed of conveyance expressed to be made *between parties*, (*inter partes*,) and in the *third person*; thus: “This Indenture, made, &c. between — of the first part, and — of the second part, witnesseth, that the said party of the first part, &c. hath granted,” &c.; in which respects it is distinguished from a deed poll, which is expressed to be made by *one party* only, and in the *first person*, thus: “Know all men by these presents, that I, — of —, &c. have granted,” &c. See *Inter partes*.

A deed of conveyance *indented* or cut at the top or side in an *indented*, waving, or scalloped line, as distinguished from a deed *poll*, which has the edge uncut or even. See *infra*.

\* \* The ancient inherent and essential distinction between an *indenture* and a *deed poll*, (and which the names themselves so significantly express,) viz. that the one was always *indented*, and the other *not*, has become almost entirely obliterated by time, and the gradual disuse of the ancient forms; the result of which has been to leave the names of these instruments with very little sensible meaning. As late as the time of Lord Coke, when the forms of indentures had become substantially the same as at present, the old rule and practice of indenting were strictly retained, it being laid down by that author that the *manual act of indenting* the parchment made the instrument an *indenture*, though it did not itself purport in words to be an indenture; and that, on the other hand, though it contained words of indenture, yet, *unless actually indented*, it was no indenture. *Co. Litt.* 229 a. 5 *Co.* 20 b, *Stile's case*. And see 3 *Leon.* 16, case 39. Since that time, however, the indenting of deeds has gradually become a mere form, and, though retained in England in the practice of cutting the top of the parchment in a waving line,

it is not, in general, necessary to the legal validity of the instrument. 2 *Bl. Com.* 296. 1 *Steph. Com.* 447. See *Deed indented*. Careful conveyancers, however, even in the United States, continue to notch or scallop the edge of the paper at the top of deeds, which, however unimportant in its legal effect, is not without significance, as an expression of the real character of the instrument. In England, it has been thought necessary to declare, by act of parliament, that a deed shall have the effect of an indenture, though not actually indented. *Stat. 8 & 9 Vict. c. 106, § 5*.

**INDENTURE.** A contract in two parts, by which a person is bound to serve another in his trade, art or occupation, on condition of being instructed in it. See *Apprentice*.

**INDEPENDENT COVENANTS.** Covenants in an instrument which are independent of each other, or where the performance of one does not depend upon the performance of the other; and where either party may recover damages from the other, for the injury he may have sustained by a breach of the covenants in his favor, without averring performance of other covenants on his part, as conditions precedent. See 1 *Selden's R.* 247.

The dependence or independence of covenants is determined by the order of time in which, by the terms and meaning of the contract, their performance is required. *Id. ibid.*

**Independenter se habet assecuratio a viaggio navis.** The voyage insured is an independent or distinct thing from the voyage of the ship. 3 *Kent's Com.* 318, note.

**Index animi sermo.** Speech is the index of the mind or thought; language is the exponent of intention. Nothing can so well explain the meaning of the makers of an act as their own direct words. *Broom's Max.* 268, [480.] See *Verba sunt indices animi*.

**INDICARE.** L. Lat. [from *index*, a shower or pointer.] In the civil law. To show or discover.

To fix or tell the price of a thing. *Calv. Lex.*

To inform against; to accuse. *Dig.* 50. 16. 197.

**INDICATION.** [Lat. *indicatio*, from *indicare*, q. v.] In the law of evidence. A sign or token; a fact pointing to some inference or conclusion. *Burr. Circ. Evid.* 251, 252, 263, 275.

**INDICAVIT.** L. Lat. [from *indicare*, to show.] In English practice. A writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by the clerk of another patron, for tithes amounting to a fourth part of the value of the living. 3 *Bl. Com.* 91. 3 *Steph. Com.* 711. So termed from the emphatic words of the Latin form. *Reg. Orig.* 35 b, 36.

**INDICIA.** Lat. [plur. of *indicium*, q. v.] In the law of evidence. Signs; marks; tokens; badges; indications; facts proved as pointing to facts sought. *Cod.* 3. 32. 19. *Id.* 4. 19. 25. *Burr. Circ. Evid.* 121, note (d). *Indicia indubitata quæ fidem extorquent*; undoubted tokens which extort belief. 14 *St. Trials*, 1199, 1231. *Indiciis luce clarioribus*; by indications clearer than light. *Cod.* 4. 19. 25.

Physical marks of crime. *Fleta*, lib. 1, c. 25, § 14.

Badges of guilt, on the part of an accused person. *Burr. Circ. Evid.* 83.

Badges of fraud in conveyances of property. 2 *Kent's Com.* 515.

**INDICIUM.** Lat. In the civil law. A sign or mark. A species of proof, answering very nearly to the *circumstantial evidence* of the common law. *Best on Presumptions*, 13, § 11, note. *Wills on Circ. Evid.* 34.

**INDICT.** [L. Lat. *indictare*, from Fr. *endicter*, or *enditer*, from Gr. *ἐνδείκνυμι*, to point out, or present by name before a court.] In criminal law. To accuse by the finding or presentment of a grand jury; to find an indictment against.\* See *Indictment*. *Indite* and *endite* were old forms of this word. *Cowell. Blount*.

In old maritime law. To proclaim, or openly declare. "If war be *indicted*, or is begun," &c. *Molloy, de Jur. Mar.* 17.

**INDICTAMENTUM.** L. Lat. In old English law. An indictment. *Reg. Orig.* 169 b. *Fleta*, lib. 1, c. 34, § 39. *Co. Litt.* 126 b.

**INDICTARE.** L. Lat. In old English law. To indict. *Stat. Westm.* 2, c. 46. *Fleta*, lib. 1, c. 25, § 3. *Indictatus*; indicted. *Bract. fol.* 143, 153. *Reg. Orig.* 269, 270. See *Indict*. Anciently called *indictée*. *Stat.* 21 *Jac.* I. c. 8. *Blount*.

**INDICTIO.** Lat. [from *indicare*, to declare or proclaim.] In old public law. A declaration; a proclamation. *Indictio belli*; a declaration or indictment of war. *Molloy*,

*de Jur. Mar.* 17. *Grotius, de Jur. Bell.* lib. 3, c. 3.

**INDICTMENT.** [L. Fr. *enditement*; L. Lat. *indictamentum*.] In criminal law. A written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath by a grand jury. 4 *Bl. Com.* 302. 4 *Steph. Com.* 369. *Arch. Crim. Pl.* 1. See *Indict.* Sometimes written *inditement* and *enditement*. *Co. Litt.* 126 b. See *Wharton's Prec. of Indictments. United States Digest, Indictment.*

**INDICULUS.** L. Lat. A species of formula in the jurisprudence of the middle ages, resembling a writ or precept, but, as is supposed, without a seal. *Spelman. Steph. Pl. Appendix, Note* (2.)

Any declaratory writing, (*scriptum indicativum*.) *Spelman.*

**INDIFFERENT.** Impartial; unbiassed; disinterested.

**INDIGENA.** Lat. In old English law. A subject born; one born within the realm, or naturalized by act of parliament; a native. *Co. Litt.* 8 a. The opposite of *alienigena*, (q. v.)

**INDILATE.** L. Lat. [from *in*, priv. and *dilatus*, delayed.] In old English practice. Without delay. A formal word in writs. *Reg. Orig.* 128 b. *Fleta*, lib. 2, c. 47, § 4.

**INDIRECT EVIDENCE.** That kind of evidence which goes to prove a principal fact, by establishing other or subordinate facts, from which the principal fact may be inferred or presumed. *Vinnius, Jurispr. Contr.* lib. 4, c. 25. 3 *Benth. Jud. Evid.* 25. See *Direct*. Generally used as synonymous with *circumstantial evidence*. *Burr. Circ. Evid.* 4—7. *Best on Evid.* 21, 22, § 27. But see *Id. ibid.* note.

**INDITEE.** L. Fr. In old English law. A person indicted. *Mirr.* c. 1, sect. 3. 9 *Co. pref.*

**INDIVIDUUM.** Lat. In the civil law. That cannot be divided. *Calv. Lex.*

**INDIVISUM.** Lat. [from *in*, priv. and *divisum*, divided.] Undivided; that which two hold in common without partition. *Cowell.* See *Pro indiviso*.

In the civil law, this word sometimes had the sense of *individuum*, (q. v.) *Calv. Lex.*

**INDOMINICATUS, Indominicatum.** [from *in*, in, and *dominicum*, demesne.] In feudal and old European law. In demesne; reserved for the use of the lord. *Spelman.*

**INDORSAMENTUM.** L. Lat. [from *indorsare*, q. v.] In old English law. Indorsement; an indorsement; a writing on the back. *Cowell*, voc. *Indorsement*. See 3 *P. Wms.* 428, 434. The continental writers use *indossamentum*, (q. v.)

**INDORSARE.** L. Lat. [from *in*, on, and *dorsum*, the back.] In old English law. To put or write on the back. *Dies captionis indorsari debet in tergo brevis*; the day of the taking ought to be indorsed on the back of the writ. *Bract.* fol. 365 b. *Reg. Orig.* 20, in marg. *Indorsavit*; he indorsed. 7 *Mod.* 86. *Indorsatum*; indorsed. *Mem. in Scacc.* H. 26 Edw. I. *Fleta*, lib. 6, c. 6, § 19.

**INDORSAT.** In old Scotch law. Indorsed. 2 *Pitc. Cr. Trials*, 41.

**INDORSE, Endorse.** [L. Lat. *indorsare*; L. Fr. *endorser*, qq. v.] To put on the back; to write on the back, (*in dorso*.)

In mercantile law. To write one's name on [and properly, across] the back of a bill of exchange, promissory note or check, with or without other words; to transfer by such writing. See *Indorsement*.

To write one's name on the face of a bill or note, or on another paper annexed to it. See *Indorsement*. This is an improper sense of the term.

**INDORSEE, Endorsee.** [L. Lat. *indos-satarius*.] In mercantile law. The party in whose favor a bill of exchange, promissory note or check is *indorsed*; the party to whom it is transferred by the indorsement of the payee, or any previous holder.\* *Chitty on Bills*, 2.

**INDORSEMENT, Endorsement.** [Fr. *endossement*; L. Lat. *indorsamentum, indossamentum*, qq. v.] Any writing on the back, (*in dorso*), of any instrument or paper. 1 *Salk.* 375. A writing on the back of a paper or parchment containing another writing. 7 *Mod.* 86. Called "a term known in law." *Id. ibid.* See *Indorse*.

In mercantile law. The writing one's name on [that is, across] the back of a bill of exchange, promissory note or check; the writing the name of the payee, or holder of a bill, note or check on the back of it, by which the property in it is assigned and transferred.\* 2 *Bl. Com.* 468, 469. *Story on Bills*, § 204. *Story on Notes*, § 121.

The writing the name of the payee or holder of a bill or note on the face of it, or on another paper annexed to it, (and called in French law, *allonge*, q. v.) It is well settled that writing on the back of a bill or

note is not essential to a valid indorsement. On the contrary, it will be a good indorsement if it be made on the face of the bill or note. *Story on Bills*, § 204. *Story on Notes*, § 121. 1 *Str.* 18, 19. But this is, undoubtedly, an improper sense of the term.

\* \* In the case of *Rex v. Bigg*, (3 *P. Wms.* 419,) the prisoner was indicted for raising out an *indorsement* on a Bank of England note. The fact was, that he had, by means of lemon juice, taken out a receipt, written on the *inside* of the note and across its face, but "called by the bank an indorsement." It was urged for the prisoner, that this receipt written on the *face* of the note was not an *indorsement*; and the learned counsel relied on the plain signification of the word, not only as indicated by its obvious composition and etymology, but as sanctioned by common use. The opinion of the judges is not given in the report of the case, although it is said in a note that they differed in opinion, but the majority of them held it to be felony. In 1 *Str.* 18, 19, which contains a report of the same case, it appears that the court held that the writing on the face of the note was of the same *effect* as an indorsement, and being *introduced by the company* instead of writing on the back, and always accepted and taken to be an indorsement, was within the words of the indictment.

In a late Virginia case, the word "endorsement" was construed by the court in its general sense, "a writing on the back." 11 *Grattan's R.* 830. It was said in this case, by Lee, J. that "the primitive and popular sense of something written on the *outside*, or *back* of a paper, on the *opposite* side of which something else had been previously written, should be given to the word wherever the context shows it to be proper, or it is necessary to give effect to the pleading or other instrument in which it may occur." *Id. ibid.*

**INDORSEMENT IN BLANK.** In mercantile law. An indorsement consisting merely of the signature of the party making it. *Story on Bills*, § 206. An indorsement is said to be *in blank*, when the name of the indorser is simply written on the back of the note, leaving a *blank* over it for the insertion of the name of the indorsee, or of any subsequent holder. *Story on Notes*, § 138.

**INDORSEMENT IN FULL.** In mer-

cantile law. An indorsement which mentions the name of the person in whose favor it is made, thus: "Pay A. B. or order, C. D." *Story on Notes*, § 139. *Story on Bills*, § 206.

**INDORSER, Endorser.** [L. Lat. *indossans.*] In mercantile law. The party by whom a bill of exchange, promissory note or check is indorsed.\* *Chitty on Bills*, 2.

**INDORSOR.** An old form of *indorser*, and strictly the true form of the word. 11 *Mod.* 369.

**INDOSSAMENTUM.** L. Lat. In mercantile law. Indorsement; an indorsement. *Id quod vocant indossamentum, quia dorso inscribi solet*; that which they call indorsement, (*indossamentum*.) because it is usually written *dorso*, (on the back.) *Heinecc. de Camb.* c. 2, §§ 7, 10, 11.

**INDOSSANS.** L. Lat. An indorser. *Heinecc. de Camb.* c. 2, §§ 10, 11.

**INDOSSATARIUS.** L. Lat. An indorsee. *Heinecc. de Camb.* c. 2, §§ 10, 11.

**INDUCEMENT.** [from Lat. *inducere*, to introduce or bring in.] In pleading. Introduction; a leading to, or bringing in.\* Matter of *inducement* is matter brought forward only by way of explanatory introduction to the main allegations of a pleading. *Steph. Pl.* 243.

In criminal evidence. Motive; that which leads or tempts to the commission of crime. *Burr. Circ. Evid.* 283.

**INDUCIÆ.** Lat. In the law of nations. A truce; a suspension of hostilities; an agreement during war, to abstain for a time from warlike acts. *Grotius, de Jur. Bell.* lib. 3, c. 21, § 1. One of the *commercio belli*. *Id. ibid.*

In old maritime law. A period of twenty days after the safe arrival of a vessel under bottomry, to dispose of the cargo, and raise the money to pay the creditor, with interest. *Loccenius, de Jur. Mar.* lib. 2, c. 6, § 10.

In old English practice. Delay or indulgence allowed a party to an action; further time to appear in a cause. *Bract.* fol. 352 b. *Fleta*, lib. 4, c. 5, § 8.

In Scotch practice. Time allowed for the performance of an act. *Arkley's R.* 270. Time to appear to a citation. 2 *Brown's R.* 267. Time to collect evidence or prepare a defence. 1 *Swinton's R.* 360, arg.

**INDUCTIO.** Lat. [from *inducere*, to draw along, or over.] In the civil law. Obliteration, by drawing the pen or *stylus*

over the writing. *Dig.* 28. 4. *Calv. Lex.*

**INDUCTION.** [L. Fr. *induccion*, from Lat. *inductio*, a leading into.] In English ecclesiastical law. The giving a clerk or parson corporal possession of a church, which is done by *leading* him *into* it, and delivering him the keys by the archdeacon or bishop's deputy; and by his tolling a bell, or the like, to show that he has taken possession. *Cowell.* 1 *Bl. Com.* 391. The object of this form is to give all the parishioners due notice, and sufficient certainty of their new minister, to whom their tithes are to be paid. *Id. ibid.* It is the investiture of the temporal part of the benefice, as institution is of the spiritual. *Id. ibid.*

**INDUSTRIALIS.** Lat. [from *industria*.] In the civil law. Industrial; produced by industry. See *Fructus industriales*.

**INESSE.** Lat. To be in; to be inherent in; to be a component part of. See *Quæ incontinenti fiunt*, &c.

**INEVITABLE ACCIDENT.** In the law of bailment. Any accident produced by any physical cause which is inevitable, such as a loss by lightning or storms, by the perils of the seas, by an inundation or earthquake, or by sudden death or illness. *Story on Bailm.* § 25. Commonly called *the act of God*. *Id. ibid.* 2 *Kelly's* (Ga.) R. 349.

**INFALISTATUS.** L. Lat. [from *in*, and Fr. *falaize*, the sea shore.] In old English law. Exposed upon the sands, or sea shore. A species of punishment mentioned in Hengham. *Summa Parva*, c. 3. *Cowell.* See *Faleste*.

**INFAMARE.** Lat. [from *in*, priv. and *fama*, reputation.] In the civil law. To defame; to attack or injure one's character by word or writing. *Brissonius.* *Eum qui nocentem infamat, non est æquum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit*; it is not just that he who defames a guilty person should be condemned therefor; for it is both right and proper that the crimes of the guilty should be made known. *Dig.* 47. 10. 17. 3 *Bl. Com.* 125.

**INFAMIA.** Lat. [from *infamis*, q. v.] An evil report. 4 *Reeves' Hist. Eng. Law*, 37.

Infamy; ignominy or disgrace.

**INFAMIS.** Lat. [from *in*, priv. and *fama*, reputation.] Infamous; without

character or reputation; not of good character. *Calv. Lex.*

Branded as infamous by the law. *Id.*

**INFAMOUS CRIME.** In criminal law. A crime which, in England, formerly incapacitated the party committing it from giving evidence as a witness; such as treason, *præmunire*, felony, and every species of the *crimen falsi*, as perjury, forgery, and the like. *Roscoe's Crim. Ev.* 135, *et seq.* Incompetency from this cause has been abolished by statute 6 & 7 Vict. c. 85.

By the Revised Statutes of New-York, the term "infamous crime," when used in any statute, is directed to be construed as including every offence punishable with death or by imprisonment in a state prison, and no other. 2 *Rev. St.* [702, § 31,] 587, § 35.

**INFANC, Infang.** Sax. [from *in* on, and *fang*, a hand, or *fangen*, to take hold.] In old European law. A laying hands on. *Si in eum contra legem manus injicerit, quod infanc dicitur*, &c.; if he lay hands on him contrary to law, which is called *infanc*, &c. *L. Boior.* tit. 3, § 3. *Id.* tit. 4, § 5. *Spelman.*

**INFANCY.** [L. Lat. *minor ætas*.] The state of an infant; nonage, or minority; the state of being under age, or under the age of twenty-one years.\* 4 *Bl. Com.* 22. 1 *Id.* 463. See *Infant*. The *infantia* of the civil law was only one of the stages of minority, reaching to the age of seven. See *Infantia*.

**INFANGTHEFE, Infangtheof, Infangthef, Infangethef, Infangenethef, Infongenethef, Infangenetheof.** Sax. [from *in*, within, *fang*, taken, and *thef*, or *theof*, a thief; Lat. *infra captus fur*.] In old English law. A thief taken in, or within; i. e. within the manor or liberty of any man having jurisdiction to try him. *Spelman.* *Fleta*, lib. 6, c. 37, § 2.—A thief taken on any one's lands, being one of his own men or tenants, found in possession of the thing stolen; (*latro captus in terrâ alicujus, de hominibus suis propriis seysitus latrocinio*.) *Bract.* fol. 154 b. 2 *Reeves' Hist. Eng. Law*, 40.

The privilege or liberty anciently granted to lords of certain manors, to try such offenders. *Id. ibid.* *Cowell.* *LL. Gul. Conq.* l. 3, note.

**INFANS.** Lat. [from *in*, priv. and *fans*, speaking.] In the civil law. A child under the age of seven years; so called *quasi impos fandi*, (as not having the faculty of speech.) *Cod. Theodos.* 8. 18. 8.

*Cod.* 6. 30. 18. *Dig.* 36. 1. 65. 3. 1  
*Mackeld. Civ. Law*, 136, § 126. *Tayl. Civ. Law*, 258, 259. 4 *Bl. Com.* 22.

*Infans non multum à furioso distat.* An infant is not far removed from [not very unlike] a madman. *Inst.* 3. 20. 9. 1 *Story's Eq. Jur.* §§ 223, 242.

**INFANT.** [from *Lat. infans*, q. v.] A person within age, not of age, or not of full age; a person under the age of twenty-one years; a minor. *Co. Litt.* 171 b. 1 *Bl. Com.* 463—466. 2 *Kent's Com.* 233. 1 *Story's Eq. Jur.* § 240. See *Age, Full age*.

**INFANTIA.** *Lat.* [from *infans*, q. v.] In the civil law. The age from birth till the completion of seven years. 4 *Bl. Com.* 22. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 1, tit. 21, § 247.

**INFANTICIDE.** In medical jurisprudence. The murder of a newly born infant. See *Whart. and Stille's Med. Jur.* § 356.

**INFEST.** In Scotch law. To give seisin or possession of lands; to invest, or enfeoff. 1 *Kames' Equity*, 215. See *Inseftment*.

**INFESTMENT.** In old Scotch law. Investiture or infeudation, including both charter and seisin. 1 *Forbes' Inst.* part 2, p. 110.

In later law. Sasine, or the instrument of possession. *Bell's Dict.*

**INFENSARE CURIAM.** *L. Lat.* An expression applied to a court when it suggested to an advocate something which he had omitted through mistake or ignorance. *Spelman.* *Spelman* gives no translation of the word *infensare*. The phrase strongly resembles the old Scotch expression, "to fence a court," and may possibly have the same meaning.

**INFEODARE, Infeudare.** *L. Lat.* [from *in*, and *feodum*, a fee.] To confer or bestow a fief, feud, or fee; to enfeoff; to give seisin of lands. *Spelman.* 2 *Bl. Com.* 310.

**INFEOFF.** See *Enfeoff*.

**INFERENCE.** In the law of evidence. A process of reasoning, by which one fact is deduced from another; the process by which a fact sought to be proved is deduced from one or more other facts proved. *Burr. Circ. Evid.* 5, 146.

The conclusion arrived at by such process. *Id.* 25. See *Presumption*.

**INFERENDA.** *L. Lat.* In old European law. A tribute paid annually. *Spelman.*

**INFERENTIAL.** In the law of evidence. Operating in the way of inference; argumentative. Presumptive evidence is sometimes termed *inferential*. *Gibson, C. J.* 4 *Barr's R.* 272.

**INFICIARI, Infitiari.** *Lat.* In the civil law. To deny; to deny one's liability; to refuse to pay a debt or restore a pledge; to deny the allegation of a plaintiff; to deny the charge of an accuser. *Calv. Lex.*

**INFICIATIO.** *Lat.* [from *inficiari*, q. v.] In the civil law. Denial; the denial of a debt or liability; the denial of the claim or allegation of a party plaintiff. *Calv. Lex.*

**INFICIATOR, Infitiator.** *Lat.* [from *inficiari*, q. v.] One who denies; one who denies that he owes what a plaintiff claims, or has committed what an accuser charges. *Nonius. Calv. Lex.*

**INFIDELIS.** *Lat.* [from *in*, priv. and *fidelis*, faithful.] In old English law. An infidel, or heathen. *Inter infideles connumerare*; to reckon among infidels; to excommunicate. *Cowell.*

In feudal law. An unfaithful, or faithless person; one who violated his oath of fidelity or fealty. *Capitul. Caroli*, lib. 4, tit. 34. *Spelman.*

**INFIDELITAS.** *Lat.* In feudal law. Infidelity; faithlessness to one's feudal oath. *Spelman.*

**INFIDUCIARE.** *L. Lat.* In old European law. To pledge property. *LL. Longob.* lib. 2, tit. 29, l. 2. *Spelman.*

**INFIHT.** *Sax.* An assault made on a person inhabiting the same dwelling. *Wharton's Lex.*

**INFINITUM.** *Lat.* [from *in*, priv. and *finis*, end.] Without end or limit; unlimited; undefined.

**Infinitum in jure reprobatur.** That which is endless is reprobated in law. 12 *Co.* 24. Applied to litigation. *Id. ibid.*

**INFIRMARE.** *Lat.* [from *in*, priv. and *firmus*, strong.] To invalidate; to deprive of strength or force. *Quibus modis testamenta infirmantur*; in what ways wills are invalidated. *Inst.* 2. 17.

**INFIRMATIVE.** In the law of evidence. Having the quality of diminishing force; having a tendency to weaken or render *infirm*. This word was first introduced into the law of evidence by Mr. Bentham, and has been generally adopted by other writers. 3 *Benth. Jud. Ev.* 14. *Best on Pres.* § 217.

## INFIRMATIVE CONSIDERATION.

In the law of evidence. A consideration, supposition or hypothesis of which the criminative facts of a case admit, and which tends to weaken the inference or presumption of guilt deducible from them. *Burr. Circ. Evid.* 153—155.

INFIRMATIVE FACT. In the law of evidence. A fact set up, proved or even supposed, in opposition to the criminative facts of a case, the tendency of which is to weaken the force of the inference of guilt deducible from them. 3 *Benth. Jud. Ev.* 14. *Best on Pres.* § 217, *et seq.* *Burr. Circ. Ev.* 154. Otherwise called an exculpatory fact. *Id.* 536—580.

INFIRMATIVE HYPOTHESIS. In the law of evidence. An hypothesis or theory upon which the criminative facts of a case may be explained consistently with the idea or supposition of the prisoner's innocence. *Burr. Circ. Evid.* 153, 183, 184, 186, 188—192.

INFISCARI. L. Lat. [from *in*, into, and *fiscus*, treasury.] In old European law. To be adjudged to the exchequer, (*fisco adjudicari*;) to be seized for the public treasury, (*in fiscum rapi*;) to be confiscated. *Spelman.*

INFORMATION. A process or proceeding in behalf of the crown, or (in American law) the people, used both as a criminal prosecution and a civil remedy; and so termed, because founded upon *information* given or supposed to be given by the attorney-general, or other proper law officer of the government.

A criminal information is an accusation exhibited against a defendant for some criminal offence, not (like an indictment,) upon the oath of jurors, but on the suggestion or information, and at the discretion of an officer empowered to exhibit it.\* *Cole on Informations*, 1. *Brande.* 4 *Bl. Com.* 307, 308. *Wharton's Am. Crim. Law*, § 213.

Civil informations include informations in chancery, and in the court of exchequer, and informations in the nature of a writ of *Quo warranto*, the latter being most commonly used as private remedies to try the right to an office or franchise. 3 *Bl. Com.* 261, 262. 4 *Steph. Com.* 34, 48. 3 *Id.* 689, 691. *United States Digest*, Information. See *Quo warranto*.

INFORMATOR. L. Lat. An informer. *Spelman.* See *Informer*.

INFORMATUS. L. Lat. Informed. See *Non sum informatus*.

INFORMER. [L. Lat. *informator*; Lat. *delator*.] One who informs against another for the violation of some penal statute; one who gives information upon which another may be prosecuted for the violation of some penal statute. See *Common informer*, *Qui tam*. Called, also, in old law, *promoter*.

INFORTIARE. L. Lat. [from Fr. *enforcer*.] To strengthen or fortify. *Spelman.* To add to, increase, or enlarge. The same with *afforciare*, (q. v.)

INFORTIATUM. L. Lat. [from *infortiare*, to enlarge.] The name given by the glossators to the second of the three parts or volumes into which the Pandects were divided. The glossators at Bologna had at first only two parts, the first called *Digestum Vetus*, (the old Digest,) and the last, called *Digestum Novum*, (the new Digest.) When they afterwards received the middle or second part, they separated from the *Digestum Novum* the beginning it had then, and added it to the second part, from which *enlargement* the latter received the name *Infortiatum*. 1 *Mackeld. Civ. Law*, 91, § 100.

INFORTUNIUM. Lat. [from *in*, priv. and *fortuna*, fortune.] In old English law. Misfortune; misadventure; mischance. *Fleta*, lib. 1, c. 31, § 3. See *Homicide per infortunium*.

INFRA. Lat. and L. Lat. Below; under; underneath. This is the strict and proper meaning of the word, the correlative word being *supra*, above. *Primo gradu est supra, pater, mater*; *infra, filius, filia*. *Secundo gradu, supra, avus, avia*; *infra, nepos, neptis*. In the first degree above, is father, mother; below, son, daughter. In the second degree above, grandfather, grandmother; below, grandson, granddaughter. *Inst.* 3. 6. 1. See *Id.* 3. 6. 2, 3, 4. *Dig.* 38. 10. 1. 3, 4. This meaning is preserved in the phrase *infra ætatem*, (q. v.)

Within.—This is the ordinary, but (in most of its applications,) improper meaning of the word, as appears in the common phrases, *infra corpus comitatûs*, *infra præsidia*, *infra quatuor maria*, and the like. The proper word in these expressions, as Mr. Hargrave has observed, is *intra*, and hence Grotius is classically correct in using *intra præsidia*, (q. v.) *Hargr. Co. Litt.* Note 115, lib. 2.

\* \* The use of *infra*, (below,) in the sense and place of *intra*, (within,) is a corruption of very ancient date. Blackstone, indeed, quotes the phrase *infra annum luctus*, (within the year of mourning,) as used in the civil law. *Cod.* 5. 9. 2. 1 *Bl. Com.* 457. But in the latest glossed edition of the *Corpus Juris Civilis*, (Lyons, 1627,) the reading in the constitution here referred to, and also in the preceding one, is *intra*, and *intra* is also used throughout the glosses. See *Infra annum luctus*. In the codes of the barbarous nations, (the Franks, Lombards, Bavarians and others,) the corruption very distinctly appears, so intermixed, however, with the genuine word as to show that it had not even then become confirmed. *Intra capsum*; within the chest. *LL. Longob.* lib. 1, tit. 7, l. 9. *Infra capsum.* *Id.* ib. tit. 8, l. 14. *Intra capsum.* *Id.* ib. l. 20. *Ab infra*; from within. *Id.* lib. 1, tit. 19, l. 10. *Intra placitum*; within the court. *L. Salic.* tit. 49. *Infra placitum.* *Id.* tit. 72, § 1. *Infra curtem*; within the court. *L. Baiwar.* tit. 13, § 2. The same improper and unsettled use of *infra* occurs in the collection of forest law attributed to Canute. *Infra septa*; within the enclosures. § 27. *Infra limites.* *Id.* *ibid.* *Inter septa.* *Id.* *ib.* *Infra septa.* *Id.* § 31. *Intra septa.* *Id.* § 33. After the Conquest, *infra* seems to have entirely supplanted *intra*, both in English and Scotch law. *Infra maneria*; within the manors. *Reg. Orig.* 10 b. *Infra libertates vel extra*; within liberties or without. *Id.* 24 b. *Infra regnum*; within the realm. *Id.* 25. *Infra listas*; within the lists. *Magna Charta*, 9 Hen. III. c. 25. *Infra annum*; within a year. *Bract.* fol. 7. *Infra furorem*; during madness. *Id.* fol. 19 b. *Infra pallacium*; within the palace. *Mem. in Scacc.* H. 22 Edw. I. *Infra comitatum vel extra*; within a county or without. *Bract.* fol. 352 b. *Infra metas et divisas*; within the metes and bounds. *Chart. Rob. I. Ranulpho Com. Morav.* *Infra regnum.* *Id.* *Chart. Jac. Rob. Dom. Seytoun.*

This singular use of so common a preposition as *infra* perhaps originated in the circumstance that the characteristic meanings of *infra* and *intra* were, in certain applications, identical. Thus, to be *below* (*infra*) a certain number, and to be *within* (*intra*) it, were expressions conveying the same idea; just as, in English, the words "under" and "within" are constantly used

as synonymous in expressing periods of time, as in the phrases "under a year," "within a year," &c.

The expression "under age," (the correct literal translation of *infra ætatem*,) indeed, is of more common occurrence than "within age." But the use of *infra* in the sense of *intra*, as expressive of *place*, is an undoubted barbarism.

**INFRA ÆTATEM.** Lat. [L. Fr. *deins age*.] Below or under age; within age. *Bract.* fol. 19 b. In *Magna Charta*, (9 Hen. III. cc. 3, 4,) and the statute of Merton, (c. 22,) this phrase is written *infra etatem*.

**INFRA ANNOS NUBILES.** L. Lat. Under or within marriageable years; not of a marriageable age. 6 Co. 22, *Ambrosia Gorge's case.* *Hale's Anal.* sect. xiv.

**INFRA ANNUM.** L. Lat. Under or within a year. *Bract.* fol. 7.

**INFRA ANNUM LUCTUS.** Lat. Within the year of mourning. This phrase is quoted by Blackstone from the civil law. *Cod.* 5. 9. 2. 1 *Bl. Com.* 457. But the constitution referred to, contains only the phrase *intra anni spatium*. In the constitution immediately preceding, or rather the extract from the Authentics appended to it, the phrase *intra luctus tempus* occurs. See *Infra*.

**INFRA BRACHIA.** L. Lat. [L. Fr. *entre ses bras*.] Within her arms. A term anciently used to denote a husband not only *de jure*, but *de facto*. *Stat. Glocest.* c. 9. 2 *Inst.* 317. Lord Coke observes that *infra* has here the sense of *inter*. *Id.* *ibid.* Bracton and Fleta have *inter brachia*. *Bract.* fol. 148 b. *Fleta*, lib. 1, c. 35.

**INFRA CIVITATEM.** L. Lat. Within the state. 1 *Campb.* 23, 24.

**INFRA CORPUS COMITATUS.** L. Lat. Within the body of a county. A term applied to waters over which the admiralty has no jurisdiction. 1 *Kent's Com.* 366, 367 note. *Molloy, de Jur. Marit.* 231. In the case of *Waring et al. v. Clarke*, the Supreme Court of the United States held, that the admiralty jurisdiction of the courts of the United States, in cases of tort or collision, extends to tide-waters, as far as the tide flows, though that may be *infra corpus comitatús*. 5 *Howard's R.* 441. *Wayne, J.* *Id.* 451, 452, 464. And see 20 *Howard's R.* 296.

**INFRA DIGNITATEM CURIÆ.** L. Lat. Beneath the dignity of the court. 3 *Burr.* 1592. A term applied to cases

where a suit is too trifling in amount or in character to be entertained by a court. 1 *Chitt. Gen. Pr.* 823, note.

**INFRA FUROREM.** L. Lat. During madness; while in a state of insanity. *Bract.* fol. 19 b. *Fleta*, lib. 3, c. 9, § 17.

**INFRA GILDAM.** L. Lat. Within a gild, or guild. *Reg. Orig.* 219 b.

**INFRA HOSPITIUM.** L. Lat. Within an inn; within the inn. *Reg. Orig.* 105. 8 *Co.* 32, *Calye's case*. 1 *Smith's Lead. Cas.* 47. 2 *Kent's Com.* 593. *Story on Bailm.* § 478.

The use of this phrase seems to have originated in *Calye's case*. The phrase itself is taken from the Register.

**INFRA JURISDICTIONEM.** L. Lat. Within the jurisdiction. 2 *Stra.* 827. *Latch*, 214.

**INFRA METAS.** L. Lat. Within the bounds or limits. *Infra metas forestæ*; within the bounds of the forest. *Fleta*, lib. 2, c. 41, § 12. *Infra metas hospitii*; within the limits of the household; within the verge. *Id.* lib. 2, c. 2, § 2.

**INFRA LIGEANTIAM REGIS.** L. Lat. Within the king's ligeance. *Comb.* 212.

**INFRA PRÆSIDIA.** Lat. Within the guards or fortified places; in a place of safe custody or protection. *Molloy, de Jur. Mar.* 9. 1 *Rob. Adm. R.* 139. 1 *Kent's Com.* 102, 173. Applied to property captured in war and carried within the enemy's defences, out of all probable hopes of recovery.

*Infra*, in this expression, should undoubtedly be *intra*, as Grotius uses it. *Res quæ intra præsidia perductæ nondum sunt, quanquam ab hostibus occupatæ, ideo postliminii non egent, quia dominum nondum mutarunt ex gentium jure*; things which have not been carried *intra præsidia*, though taken possession of by the enemy, do not need the right of postliminy, because they have not yet changed their owner according to the law of nations. *Grot. de Jur. Belli*, lib. 3, c. 9, § 16. See *Id.* lib. 3, c. 6, § 3. The phrase itself is taken from the Roman law of *postliminium*, in which *intra præsidia* is distinctly and repeatedly used. *Dig.* 49. 15. 3. 1. *Intra præsidia* is also the form used by Blackstone, and in several reported cases. 2 *Bl. Com.* 402. 2 *Stra.* 1250.

**INFRA QUATUOR MARIA.** L. Lat. Within the four seas. *Litt.* sect. 157. Within the kingdom of England, and the dominions of the same kingdom. *Co. Litt.*

107 a. *In regno, infra quatuor maria.* *Bract.* fol. 437. *In Anglia, infra quatuor maria.* *Fleta*, lib. 6, c. 54, § 6. "According to classical style," as Mr. Hargrave has observed, "this phrase ought to be *intra quatuor maria*." *Harg. Co. Litt.* Note 115, lib. 2. See *Infra*.

**INFRA QUATUOR PARIETES.** L. Lat. Within four walls. 2 *Crabb's Real Prop.* 106, § 1089. *Fleta* has *inter* instead of *infra*. Lib. 6, c. 55, § 4.

**INFRA REGNUM.** L. Lat. Within the realm. *Reg. Orig.* 25.

**INFRA TEMPUS SEMESTRE.** L. Lat. Within six months, (*infra sex menses*.) *Stat. Westm.* 2, c. 5. 2 *Inst.* 361. 2 *Reeves' Hist. Eng. Law*, 195. 3 *Bl. Com.* 249.

**INFRA TRIDUUM.** L. Lat. Within three days. Formal words in old appeals. *Fleta*, lib. 1, c. 31, § 6; c. 35, § 3.

**INFRA VIRGAM.** L. Lat. Within the verge. 10 *Co.* 65. Properly, *infra virgatam*. *Fleta*, lib. 2, c. 3, § 2.

**INGAGEMENT.** An old form of *engagement*. 1 *Rep. in Ch.* 59.

**INGEN, Ingene, Engin.** L. Fr. Deceit; fraud; wrong. *Kelham*.

**INGENIUM.** [Fr. *engin*.] In old European law. Artifice; trick; fraud. *Greg. Turon.* lib. 6, c. 22. *Spelman*.

An engine, machine or device. *Flor. Wigorn. Contin.* A. D. 1138. *Fleta*, lib. 2, c. 41, § 21. *Spelman*.

**INGENUUS.** L. Lat. In old European law. A freeman; a free and lawful man; a yeoman. *Spelman*.

In the civil law. One who is free from the moment of his birth; (*qui statim ut natus est, liber est*.) *Inst.* 1. 4, pr. One who is born in marriage of parents who are both free or both freed, (*sive ex duobus ingenuis, sive ex libertinis duobus*;) or of parents, one free, the other freed, (*sive ex altero libertino, et altero ingenuo*.) *Id. ibid.* One who is born of a free mother. *Id. ibid.* *Dig.* 1. 5. 5. 2. *Calv. Lex. Spelman.* *Fleta*, lib. 1, c. 4.

**INGENUITAS REGNI.** L. Lat. In old English law. The freemen, yeomanry or commonalty of the kingdom. *Cowell*. Applied sometimes also to the barons. *Id.*

**INGRESS.** [from Lat. *ingressus*, q. v.] Entry; a going into or upon. *Ingress, egress and regress*; entry, exit and return. Words frequently used to express the right of a party to go into or upon, to go out of or off, and to go back or return to lands.

**INGRESSUS.** Lat. [from *ingredi*, to enter.] In old English law. Ingress; entry. The relief paid by an heir to the lord was sometimes so called. *Cowell*.

**INGRESSUS ET EGRESSUS.** L. Lat. In old English law. Ingress and egress; liberty of going into, and out of land. *Et quod habcant liberum ingressum et egressum*; and that they shall have free ingress and egress. *Stat. Merton*, c. 4. *Fleta*, lib. 4, c. 18, § 1.

**INGROSS.** An old form of *engross*, following the orthography of *ingrossare*, (q. v.) *Cowell*. *Blount*.

**INGROSSARE.** L. Lat. [from *in*, and *grossus*, large.] In old English law. To obtain in large quantities; to get the whole; to engross. *Spelman*. See *Engross*.

To write in a large, or court hand, (*forensi caractere*.) *Id*.

**INGROSSATOR.** L. Lat. [from *ingrossare*, q. v.] An engrosser. *Ingrossator magni rotuli*; ingrosser of the great roll; afterwards called clerk of the pipe. *Spelman*. *Cowell*.

**INGROSSER.** An old form of *engrosser*, used by *Cowell* and *Blount*. See *Ingross*.

**INHABITANT.** [Lat. *inhabitans*, from *inhabitare*, from *in*, in, and *habitare*, to dwell.] A dweller in a place; a resident. One who dwells or resides permanently in a place. *Webster*. One who has a fixed and permanent abode in a place. A *resident* and *inhabitant* mean the same thing. 2 *Kent's Com.* 430, 431, note. 20 *Johns. R.* 208. *Walworth*, C. 8 *Wendell's R.* 140. But *citizen* and *inhabitant* are not synonymous. 12 *Peters' R.* 319, 329, *Barbour*, J. The Lat. *habitare*, the root of this word, imports by its very construction, frequency, constancy, permanency, habit, closeness of connection, attachment both physical and moral, and the word *in* serves to give additional force to these senses.

**INHERIT.** [L. Fr. *enheriter*.] To take by inheritance; to take as heir, on the death of the ancestor. "To inherit to" a person, (from the Fr. *enheriter al*.) is a common expression in the books. 3 *Co.* 41. 2 *Bl. Com.* 254, 255. See *Inheritance*, *Enheriter*.

**INHERITABLE BLOOD.** In the law of descent. Blood which has an inheritable quality; blood which gives to the person who has it the character of heir; or which may be the medium of transmitting an estate of inheritance.\* 2 *Bl. Com.* 254, 255. 1 *Steph. Com.* 402. 4 *Kent's*

*Com.* 413, 424. An illegitimate child has not inheritable blood. *Id.* 413.

**INHERITANCE.** [Lat. *hæreditas*.] An estate in things real, descending to the heir. 2 *Bl. Com.* 201.—Such an estate in lands or tenements, or other things, as may be inherited by the heir. *Termes de la Ley*.—An estate which a man has by descent, as heir to another, or which (whether acquired by descent or purchase) he may transmit to another, as his heir.\* *Litt.* sect. 9.—A perpetuity in lands or tenements, to a man and his heirs. *Cowell*. *Blount*. See *Hæreditas*.

**INHERITANCE ACT.** The English statute 3 & 4 Will. IV. c. 106, by which the law of inheritance, or descent, has been considerably modified. 1 *Steph. Com.* 359, 500.

**INHIBITION.** [Lat. *inhibitio*, from *inhibere*, to forbid, or restrain.] In English ecclesiastical law. A writ issuing out of a higher court christian, to forbid an inferior judge from further proceeding in a cause before him. *Stat. 24 Hen. VIII. c. 13*. *Stat. 15 Car. II. c. 9*. *Blount*. *Shelf. Marr. & Div.* 559. Analogous to the writ of *prohibition*, with which it is sometimes confounded. *F. N. B.* 39.

In Scotch law. A species of diligence or process by which a debtor is prohibited from contracting any debt which may become a burden on his heritable property, in competition with the creditor at whose instance the inhibition is taken out; and from granting any deed of alienation, &c. to the prejudice of the creditor. *Brande*.

A writ to prevent credit from being given to a man's wife, at the creditor's peril. *Id.* See *Bell's Dict.*

**INHOC, Inhoke.** Sax. [L. Lat. *inhokium*.] In old records. A nook or corner of a common or fallow field, enclosed and cultivated. *Kennett's Par. Ant.* 297, 298. *Cowell*.

**INHONESTUS.** Lat. In old English law. Unseemly; not in due order. *Fleta*, lib. 1, c. 31, § 8.

**INIQUITY.** In Scotch practice. A technical expression applied to the decision of an inferior judge who has decided contrary to law; he is said to have committed iniquity. *Id.* *Bell's Dict.*

**INIQUUM.** Lat. [from *in*, priv. and *æquum*, even, equal, right.] Unjust; unequal; inequitable; not right. *Iniquum est alios permitttere, alios inhibere mercaturam*. It is unjust to permit trade to some,

and to inhibit it to others. 3 *Inst.* 181, *in marg.*

**Iniquum est aliquem rei sui esse judicem.** It is wrong for a man to be a judge in his own cause. *Branch's Pr.* 12 *Co.* 113. **In propria causa nemo judex.** No one should be judge in his own cause. *Id. ibid.*

**Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem.** It is unjust that freemen should not have the free disposal of their own property. *Co. Litt.* 223 a. *Hob.* 87. 4 *Kent's Com.* 131.

**INITIAL.** [from *Lat. initium*, a beginning.] That which *begins*, or stands at the *beginning*. *Initials* is now a common word, denoting the *first letters* of a name or names. A party may bind himself by signing a written instrument with his *initials*, as effectually as by signing his name in full. 1 *Denio's R.* 471.

An initial letter, between the christian and surname, is no part of the name. 4 *Watt's R.* 329. 1 *Hill's (N. Y.) R.* 102. 14 *Barbour's R.* 261. The initials of a middle name are, in law, no part of the name; and the omission or mis-statement of them will be no ground of objection. 26 *Vermont R.* 599. 8 *Foster's (N. H.) R.* 561. 8 *Texas R.* 376. 14 *Id.* 402.

**INITIALIA TESTIMONII.** *L. Lat.* In Scotch law. Preliminaries of testimony. The preliminary examination of a witness, before examining him in chief, answering to the *voir dire* of the English law, though taking a somewhat wider range. *Wharton's Lex. Bell's Dict.* See *In initialibus*.

**INITIATE.** [from *initium*, a beginning.] Begun. A term applied to a tenant by the curtesy, on the birth of a child, because his estate then *begins*, though it is not consummate or complete till the death of the wife. See *Consummate*. A term derived from the feudal law, according to which, as soon as a child of a woman seised of lands was born, the father began to have a permanent interest in the lands, he became one of the *pares curtis*, (peers of the court,) did homage to the lord, and was called *tenant by the curtesy initiate*. 2 *Bl. Com.* 127.

**INITIUM.** *Lat.* [from *inire*, to enter upon.] A, or the beginning; the origin, cause or foundation of a thing, act or contract. See *Ab initio*.

**Hoc servabitur quod initio convenit, legem enim contractus dedit.** That should be sustained which was originally agreed to, for

it has given law to the contract. *Dig.* 50. 17. 23. See *Principium*.

**INJECTURE.** *L. Fr.* A laying on. *Injecture le mains*; laying hands on. *Kelham*.

**INJUNCTION.** [*Lat. injunctio*, from *injungere*, to enjoin or command.] In practice. A prohibitory writ, granted by a court of equity, (in the nature of an *interdictum*, in the civil law,) and which may be obtained in a variety of cases, to restrain the adverse party in the suit from committing any acts in violation of the plaintiff's rights; as, to stay proceedings at law, to restrain the negotiation of notes and other securities, to restrain from committing waste or nuisance, or from infringing a patent or copyright.\* 4 *Steph. Com.* 12. 3 *Bl. Com.* 442. *Drewry on Injunctions*. More generally described as "a judicial process whereby a party is required to do a particular thing, or refrain from doing a particular thing, according to the exigency of the writ." 2 *Story's Eq. Jur.* § 861. See 3 *Daniell's Ch. Pr.* 1809, *et seq.* (Perkin's ed.)

**INJURIA.** *Lat.* [from *in*, priv. and *jus*, right.] Injury; wrong; the privation or violation of right. 3 *Bl. Com.* 2. *Injuria est quicquid non jure fit*; injury is whatever is not done rightfully. *Bract.* fol. 155. *Id.* fol. 45 b, 101. *Est injuria omne illud quod non est jus*; wrong is every thing that is not right. *Id.* fol. 378. *Est injuria omne quod non jure fit.* *Fleta*, lib. 2, c. 1, § 1. These definitions are from the civil law. See *infra*. *Non omne damnum inducit injuriam, sed è contra, injuria damnum*; every loss does not work an injury, but, on the contrary, every injury produces a loss. *Bract.* fol. 45 b. There may, however, be *injuria sinè damno*. *Story, J.* 3 *Sumner's R.* 189, 192. See *Damnum*.

**Injuria non præsumitur.** Injury is not presumed. *Co. Litt.* 232. Cruel, oppressive or tortious conduct will not be presumed. *Best on Evid.* 336, § 298.

**Injuria propria non cadet in beneficium facientis.** One's own wrong shall not fall to the advantage of him that does it. A man will not be allowed to derive benefit from his own wrongful act. *Branch's Princ.*

**INJURIA.** *Lat.* In the civil law. In a general sense,—every thing that is not done rightfully; (*generaliter dicitur omne quod non jure fit.*) *Inst.* 4. 4, pr. *Dig.* 47. 10. 1, pr.

In a special sense,—contumely or insult ; (*contumelia*, Gr. ὑβρις.) *Id. ibid.*

Fault, (*culpa*, Gr. ἀδικησις.) *Id. ibid.*

Iniquity, (*iniquitas*, ἀνομία;) or injustice, (*injusticia*, Gr. ἀδικία.) *Id. ibid.*

INJURIARE. L. Lat. [from *injuria*, q. v.] In old English law. To injure. *Reg. Orig.* 150 b. *Bract.* fol. 45 b. *Injuriatum*; injured. *Fleta*, lib. 4, c. 27, § 16.

INJURIOSUM. L. Lat. [from *injuria*, q. v.] In old English law. Injurious; wrongful; that occasions a wrong or injury. *Nocumentorum aliud injuriosum est et damnosum, aliud damnosum et non injuriosum*; of nuisances, there is one species which is wrongful and detrimental, another which is simply detrimental, and not wrongful. *Bract.* fol. 231 b. *Injurius*, in the civil law, is applied to persons. *Calv. Lex.*

INJURY. [from Lat. *injuria*, q. v.] Wrong; the privation or violation of right. 4 *Bl. Com.* 1—3. See *Wrong*.

In ordinary language, this word has effectually usurped the meaning of *damnum*, (damage,) from which it is so carefully distinguished in law, and is constantly used in cases where no manner of *right* is concerned or invaded.

INJUSTE. Lat. Unjustly. *Questus est nobis talis, quod talis injustè et sine judicio disseysivit talem*; such a one has complained to us, that such a one, unjustly and without due process of law, hath disseised such a one. *Bract.* fol. 205. *Fleta*, lib. 4, c. 12, § 3. A word of common occurrence in old writs, and extensively commented on by Bracton, *ub. sup.*

INJUSTUS. Lat. [from *in*, priv. and *justus*, just, lawful.] Unjust; wrong. *Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere*. It is wrong to decide or give an answer upon any part of a law without examining the whole of it. 8 *Co.* 117 b, *Bonham's case*.

INLAGARE. L. Lat. [from *in*, and Sax. *laga*, law.] In old English law. To restore to the law, (*ad legem restituere*.) *Fleta*, lib. 1, c. 28, § 14. To restore an outlaw or exile to the protection of the law; (*ejectum restituere in legis patrocinium*.) *Spelman*. The opposite of *utlagare*, to outlaw; but the corresponding word *inlaw*, has not been retained in English, though once used in Saxon, and occasionally by early English writers. See *Inlaw*, *Utlagare*, *Inlagary*.

INLAGARY. [L. Lat. *inlagatio*, *inla-*

*geria*; L. Fr. *inlagerie*.] In old English law. A restitution of one outlawed to the protection of the law, or to the benefit or liberty of a subject. *Cowell*. *Blount*. *Spelman*, voc. *Inlagare*. See *Inlagare*. The ancient word *utlagary*, has become the modern *outlawry*, but *inlagary* has never undergone a corresponding change into *inlawry*.

INLAGATUS. L. Lat. [from *inlagare*, q. v.] In-law, (Sax. *inlagh*, *inlaughe*;) one who was under law, (*sub lege*;) that is, under the protection of the law, by being in some frank-pledge or decennary; (*in franco plegio sive decenna*.) *Bract.* fol. 125 b. See *Inlaughe*.

INLAGHE. Sax. [from *in*, and *lagh*, law.] In-law, subject to the law, (*subjectus legi*.) *Fleta*, lib. 1, c. 47, § 24. See *Inlaughe*.

INLAND. Sax. [L. Lat. *inlandum*, *inlanda*; Lat. *terra interior*.] In old English law. The demesne land of a manor; that part which lay next, or most convenient for the lord's mansion house, as within the view thereof, and which therefore he kept in his own hands for support of his family and hospitality. *Kennett's Gloss.* *Cowell*. Distinguished from *outland* or *utland*, which was the portion let out to tenants, and sometimes called the *tenancy*. *Spelman*. See *Demesne*. This word is often found in Domesday.

INLAND. Within a country, state or territory; within the same country.

INLAND BILL OF EXCHANGE. In mercantile law. A bill of exchange drawn upon a person residing in the same state or country with the drawer;\* a domestic or intra-territorial bill. *Story on Bills*, § 22. Distinguished from a *foreign bill*, (q. v.) See *Domestic bill of exchange*.

INLANDTAL, *Inlantal*. Sax. The same with *inland*, (q. v.) *Cowell*.

INLARGE. An old form of *enlarge*. *Cas. temp. Talb.* 25.

INLAUGHE. Sax. In old English law. Under the law (*sub lege*;) in a frank-pledge, or decennary. *Bract.* fol. 125 b.

IN-LAW. In old English law. To place under the protection of the law. "Swearing obedience to the king in a leet, which doth *in-law* the subject." *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 328.

INLEASED. [from Fr. *enlasse*.] In old English law. Entangled, or ensnared. 2 *Inst.* 247. *Cowell*. *Blount*.

**INLEGIARE.** L. Lat. [from *in*, in, and *lex*, law.] In old English law. To restore to the favor of the law by satisfying its demands; to make one's self *rectus in curia*. *Cowell*.

**INLIGARE.** L. Lat. In old European law. To confederate; to join in a league, (*in ligam coire*.) *Spelman*.

**INMATE.** A person who lodges or dwells in the same house with another, occupying different rooms, but using the same door for passing in and out of the house. *Cowell*. *Webster*. *Jacob*.

In old English law, this word seems to have been applied almost exclusively to paupers, or persons not able to maintain themselves. *Kitch*. 45. And it is still constantly used in the modern law of settlements.

**INN.** [Lat. *hospitium*.] A house where the traveller is furnished with every thing he has occasion for, while on his way. 3 *B. & Ald*. 283.—A house for the lodging and entertainment of travellers. *Webster*. Used frequently in the sense of *tavern*, (q. v.) and held in New-York to be synonymous with that word. 3 *Hill's R*. 150. 2 *Kent's Com*. 595, 597, and note. See *United States Digest*, Inns and Licensed houses. To constitute a house an inn, in the sense of the common law, it must be a common inn, or *diversorium*, [*commune hospitium*,] that is, an inn kept for travellers generally, and not merely for a short season of the year, and for select persons who are lodgers. *Story on Bailm*. § 475. 2 *Kent's Com*. 595.

**INNAMUM, Innama.** L. Lat. [from Sax. *in*, and *naman*, to take.] In old English law. Things taken in, (*introcapta*;) animals taken in to feed or pasture. *Spelman*. See *Namium*.

**INNATURALITAS.** L. Lat. In old records. Unnatural usage. *Cowell*.

**INNAVIGABLE.** In insurance law. Not navigable. A term applied to a vessel when, by a peril of the sea, she ceases to be navigable, by irremediable misfortune. A ship is relatively *innavigable* when it will require almost as much time and expense to repair her as to build a new one. *Emerig. Tr. des. Ass*. ch. 12, sect. 38, tom. 1, 591—598. 3 *Kent's Com*. 323, note.

**INNAVIGABILITY.** [Fr. *innavigabilite*.] In insurance law. The condition of being *innavigable*, (q. v.) The foreign writers distinguish *innavigability* from *shipwreck*. 3 *Kent's Com*. 323, and note.

**INNIG.** L. Fr. June. *Kelham*.

**INNINGS.** In old records. Lands recovered from the sea, by draining and banking. *Cowell*.

**INNKEEPER.** One who keeps an inn, or house for the accommodation of travellers. See *Inn*. The keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation. *Bac. Abr.* Inns and Innkeepers, C. *Story on Bailm*. § 475. One who keeps a tavern or coffee-house in which lodging is provided. 2 *Steph. Com*. 133. Sometimes called an *innholder*, and more frequently *tavern-keeper*, (q. v.) See *Guest*. As to the responsibility of innkeepers, see 2 *Kent's Com*. 592—597.

**INNOCENCE.** [Lat. *innocentia*, from *in*, not, and *nocens*, guilty.] In the law of evidence. Freedom from guilt. Every person is presumed to be innocent until proved to be guilty. *Burr. Circ. Evid*. 39, 58.

**INNOMINATE.** [Lat. *innominatum*, from *in*, priv. and *nominatum*, named.] In the civil law. Not named or classed; belonging to no specific class; ranking under a general head. A term applied to those contracts for which no certain or precise remedy was appointed, but a general action on the case only. *Dig*. 2. 1. 4. 7. 2. *Id*. 19. 4 & 5.

**INNONIA.** L. Lat. [from Sax. *innan*, within.] In old English law. A close or enclosure, (*clausum, in Clausura*.) *Spelman*.

**INNOTESCIMUS.** L. Lat. We make known. A term formerly applied to letters patent, derived from the emphatic word at the conclusion of the Latin forms. It was a species of exemplification of charters of feoffment or other instruments not of record. 2 *Co*. 54 a, *Page's case*.

**INNOVATION.** In Scotch law. The exchange of one obligation for another, so as to make the second obligation come in the place of the first, and be the only subsisting obligation against the debtor. *Bell's Dict*. The same with *novation*, (q. v.) *Fleta* has *innovatio* in the same sense. *Lib*. 2, c. 60, § 12.

**INNS OF COURT.** [L. Lat. *hospitia curiæ*.] The four law societies of the Middle Temple, Inner Temple, Lincoln's Inn, and Gray's Inn, which, in England, possess the exclusive privilege of conferring the degree of *barrister at law*. 1 *Bl. Com*. 23. 1 *Steph. Com*. 19.

**INNUENDO.** L. Lat. [from *innuere*, to nod; to make a sign; to intimate or signify.] Signifying; meaning. An emphatic word in the old Latin declarations in actions of slander and libel, literally translated, ("meaning,") in the modern forms, and retained as the name of the whole clause in which the application of the slanderous or libellous matter to the plaintiff is explained, or pointed out; thus, "he (*meaning the said plaintiff*) is perjured." 1 *Chitt. Pl.* 406, 407. 2 *Id.* 624, 625. See *Hob.* 2. *Id.* 6. 1 *Ld. Raym.* 256. Said to mean no more than the words "*id est*," "*scilicet*," or "*meaning*," or "*aforesaid*," as *explanatory of a subject matter sufficiently expressed before*; as "such a one, *meaning the defendant*," or "such a subject, *meaning the subject in question*." De Grey, C. J. *Cowp.* 683. It is only explanatory of some matter already expressed; it serves to point out where there is precedent matter, but never for a new charge; it may *apply* what is *already expressed*, but cannot add to or enlarge, or change the sense of the previous words. 1 *Chitt. Pl.* 407.

**INOFFICIOSUM.** Lat. [from *in*, priv. and *officium*, duty.] In the civil law. Undutiful; contrary to, or not in accordance with natural duty, (*non ex officio pietatis*.) *Inst.* 2. 18, pr. Sometimes rendered *inofficiosum*; an undutiful will; so called when the testator disinherited or totally passed by a child, without assigning a true and sufficient reason; and which the child so disinherited or passed over was allowed to contest, (*agere de inofficioso*.) *Inst. ub. sup. Dig.* 5. 2. 3, 5. 2 *Bl. Com.* 502, 503. Parents, also, might complain of the will of a child on the same ground. *Inst.* 2. 18. 1. *Dig.* 5. 2. 1. See *Cod.* 3. 28. See *Querela*.

**INOPS CONSILII.** Lat. Destitute of counsel; without, or deprived of the aid of counsel. 2 *Bl. Com.* 172. Doderidge, J. *Latch*, 137. Applied to an American Indian. Harris, J. 4 *Comstock's R.* 299.

**INPENY and OUTPENY.** In old English law. A customary payment of a penny on entering into and going out of a tenancy, (*pro exitu de tenura, et pro ingressu*.) *Spelman. Cowell.*

**INQUÆSTIO.** L. Lat. An inquest, or inquisition. *Spelman.*

**INQUEST.** [L. Lat. *inquæstio*, *inquisitio*; from *inquirere*, to inquire.] In prac-

tice. A judicial inquiry, or examination; an inquiry into any cause or matter, civil or criminal, by a jury summoned for the purpose. Most commonly applied, in this sense, to the inquiry made by a coroner's jury. See *Coroner*.

A jury. 1 *Leon.* 109. *Bell's Dict.* A grand jury was formerly sometimes termed the great or grand *inquest*, and the term is retained in modern practice. See *Grand jury*.

The finding of a jury in a civil case, *ex parte*, that is, where the opposite party does not appear at the trial. The counsel who takes a verdict in such a case is said to *take an inquest*.

**INQUEST OF OFFICE.** [L. Lat. *inquisitio ex officio*.] In English practice. An inquiry made by the king's (or queen's) officer, his sheriff, coroner or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels; as to inquire whether the king's tenant for life died seised, whereby the reversion accrues to the king; whether A. who held immediately of the crown, died without heir, in which case the lands belong to the king by escheat; whether B. be attainted of treason, whereby his estate is forfeited to the crown; whether C. who has purchased land, be an alien, which is another cause of forfeiture, &c. 3 *Bl. Com.* 358. 4 *Id.* 301. These *inquests of office* were more frequently in practice during the continuance of the military tenures, than at present; and were devised by law as an authentic means to give the king his right by solemn matter of record. 3 *Id.* 258, 259. 4 *Steph. Com.* 40, 41. Sometimes simply termed *office*, as in the phrase "*office found*," (q. v.) As to inquests of office in American law, see 7 *Cranch's R.* 603.

**INQUILINUS.** Lat. [from *incolere*, to inhabit.] In the civil law. The hirer of a house in a city; one who lived in a hired house in a city; a city tenant, as *colonus* was a country tenant.\* *Heinecc. Elem. Jur. Civ. lib.* 3, tit. 25, § 916, note. *Dig.* 7. 8. 2. 1. *Id.* 7. 8. 4, pr. *Bract.* fol. 42 b. *Calv. Lex.*

**INQUIRY, Writ of.** [L. Lat. *breve de inquirendo*.] In practice. A judicial writ issued in certain actions at law, where a defendant has suffered judgment to pass against him by default, for the purpose of ascertaining and assessing the plaintiff's

damages, in cases where they are not ascertained nor ascertainable by mere calculation. It is directed to the sheriff of the county in which the venue of the action is laid, reciting the former proceedings and the judgment thereon that the plaintiff ought to recover his damages (indefinitely;) "but because it is unknown what damages the plaintiff has sustained by means of the premises," commanding the sheriff, that, by the oath of twelve good and lawful men of his county, he diligently inquire the same, and return the inquisition which he shall thereupon take into court. 3 *Bl. Com.* 398. 3 *Steph. Com.* 635. 1 *Tidd's Pr.* 580, 581. 2 *Archb. Pr.* 38, 39. *Chitt. Arch. Pr.* 707. 1 *Burr. Pr.* 377, 378.

In execution of this writ, the sheriff, by his under sheriff, sits as judge, and tries by a jury, subject to nearly the same law and conditions as apply to the trial by jury at *nisi prius*, what damages the plaintiff has really sustained; and when their verdict is given, which must assess some damages, the sheriff returns the inquisition, upon which judgment is entered.

**INQUISITIO.** Lat. In old English law. An inquisition or inquest. *Inquisitio post mortem*; an inquisition after death. An inquest, of office held, during the continuance of the military tenures, upon the death of every one of the king's tenants, to inquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, primer seisin, or other advantages, as the circumstances of the case might turn out. 3 *Bl. Com.* 258. *Inquisitio patriæ*; the inquisition of the country; the ordinary jury, as distinguished from the grand assise. *Bract.* fol. 15 b.

**INQUISITION.** [Lat. *inquisitio*.] In modern practice. The finding of a jury; especially, the finding of a jury under a writ of inquiry. See *Inquiry, writ of*.

**INROLL.** A form of *enroll*, used in the old books. 3 *Rep. in Ch.* 63, 73. 3 *East*, 410.

**INROLMENT, Enrollment.** [L. Lat. *irrotulatio*.] In practice. The entry of any act or matter upon a roll, (*in rotulo*.) In English practice, the registering, recording, or entering of any lawful act in the rolls of the Chancery, or of the Exchequer, King's Bench, or Common Pleas. *Termes de la Ley.* *Cowell.* The entering or transcribing a deed on a roll of parchment, according to certain forms and regulations; the tran-

scribing a deed upon the records of one of the courts at Westminster, or at a court of Quarter Sessions. *Holthouse.* This, however, does not make it a record, it being merely a private act of the parties concerned. *Id.* See *Record, Roll*.

The term *inrollment* is also applied, in equity practice, to the entry of a decree on record, at the conclusion of a suit. 2 *Daniell's Chan. Pract.* 1220. The proper orthography of this word seems to be *enrollment*, (q. v.)

**INSANE.** [Lat. *insanus*, from *in*, priv. and *sanus*, sound, healthy.] Unsound in mind; of unsound mind; deranged, disordered or diseased in mind.

Violently deranged; mad. See *Insanus*.

**INSANITY.** [Lat. *insania*, *insanitas*, from *insanus*, q. v.] Unsoundness of mind; derangement of intellect; madness. Delusion is said to be the true test of insanity. Sir John Nicholl, 3 *Addams' R.* 79. Lunacy is properly a species of insanity, although the terms are frequently used as synonymous. See *Lunacy*.

**INSANUS.** Lat. [from *in*, priv. and *sanus*, sound.] Insane; deranged; mad. *Insanus [est] qui, abjecta ratione, omnia cum impetu et furore facit*; an insane person is one who having lost reason, does every thing with violence and fury. 4 *Co.* 128 a, *Beverley's case*.

**INSCRIBERE.** Lat. [from *in*, to, or on, and *scribere*, to write.] In the civil law. To subscribe an accusation. To bind one's self, in case of failure to prove an accusation, to suffer the same punishment which the accused would have suffered had he been proved guilty. *Calv. Lex.*

**INSCRIPTIO.** Lat. [from *inscribere*, q. v.] In the civil law. A written accusation, (*libellus accusatorius*.) An undertaking to suffer the punishment of the accused, in case of a failure to prove him guilty. *Calv. Lex. Cod.* 9. 1. 10. *Id.* 9. 2. 16, 17.

**INSECTOR.** L. Lat. In old English records. A prosecutor, or adversary at law. *Kennett's Par. Ant.* 388. *Cowell.*

**INSENSIBLE.** In pleading. Unintelligible; without sense or meaning, from the omission of material words, &c. *Steph. Pl.* 377.

**INSETENA.** Sax. and L. Lat. In old records. An inditch; an interior ditch; one made within another, for greater security. *Spelman.*

**INSIDIATIO.** Lat. [from *insidia*, an

ambush.] In old English law. A lying in wait. *Insidiatio viarum*; a lying in wait for one on the highway. 4 *Bl. Com.* 373. A species of felony in which the benefit of clergy was denied even by the common law. *Id.*

*Insidiatores viarum*; way layers. *Cowell.*

INSIGNIA. Lat. Distinctive marks; characteristics. 1 *Kent's Com.* 188.

INSILIARIUS. L. Lat. [from *insilium*, q. v.] In old records. An evil counsellor, or ill adviser. *Flor. Wigorn. A. D.* 855. *Spelman. Cowell.*

INSILIUM. L. Lat. In old records. Ill advice, or pernicious counsel. *Flor. Wigorn. A. D.* 1016. *Spelman. Cowell.*

INSIMUL. Lat. Together; jointly. *Towns. Pl.* 44.

INSIMUL COMPUTASSENT, (or COMPUTASSET.) L. Lat. (They accounted together; he accounted together.) In pleading. The emphatic name given to one of the common counts, (otherwise called a count upon an *account stated*,) those being the two emphatic words of the count when framed in Latin; it setting forth that the defendant, at a certain time and place, *INSIMUL COMPUTASSET cum præfato querente, de diversis denariorum summis eidem querenti, per præfatum defendentem, ante tempus illud debitis et insolutis, &c.* *Towns. Pl.* 412. Or, as literally rendered in the modern forms, "accounted together with the said plaintiff concerning divers sums of money, before that time due and unpaid to the said plaintiff by the said defendant;" after which it goes on to say, that upon such accounting, the said defendant was found to be in arrear to the said plaintiff in a certain sum named; and being so found in arrear, the said defendant, in consideration thereof, afterwards undertook and promised to pay the said sum of money to the said plaintiff, &c.

INSIMUL TENUIT. L. Lat. In old English practice. The name of a species of the writ of formedon in the descender. *F. N. B.* 216.

INSINUARE. In the civil law. To put into; to insert; to deposit a writing in court, answering nearly to the modern expression "to file." To transcribe an act on the public registers; to record. *Si non mandatum actis insinuatum est*; if the power or authority be not deposited among the records of the court. *Inst.* 4. 11. 3.

To declare or acknowledge before a judicial officer; to give an act an official form,

(*publicare, et apud acta coram judice testari.*) *Calv. Lex.*

To make known; to give information. *Id.*

INSINUATIO. L. Lat. In old English law. Information or suggestion. *Ex insinuatione*; on the information. *Reg. Jud.* 25, 50.

INSINUATION OF A WILL. In the civil law. The first production of a will, or the leaving it with the registrar, in order to its probate. *Cowell. Blount.* See *Insinuare*.

INSOLIDE. L. Lat. Solidly; without any separation of possession or ownership. A term used by Bracton to express that impossible or impracticable kind of possession where two persons hold a thing at the same time exclusively. [*Duo non possunt simul et insolidè unam rem possidere, non magis quàm unus stare ubi alius stat, et unus sedere ubi alius sedet*]; two cannot possess one thing at the same time and solidly, [or to the same extent,] no more than one man can stand where another stands, or one man sit where another sits. *Bract. fol.* 45.

INSOLVENCY. [from Lat. *in*, priv. and *solvere*, to pay.] Inability to pay; want of solvency; the state of an insolvent; the state of a person who is unable, from want of means, to pay his debts.\* Inability to pay one's debts out of one's own means. *Cowen, J. 4 Hill's (N. Y.) R.* 650, 652. *Paige, J. 15 New-York (1 Smith) R.* 200.—Inadequacy of a man's funds to the payment of his debts. 2 *Bell's Com.* 162. *Brown, J. 15 New-York R.* 141.—The condition of a person unable to pay his debts as they fall due, or in the usual course of trade and business. 2 *Kent's Com.* 389, note. See 3 *Gray's R.* 599, 600.—Present inability to pay one's debts in full out of one's own means.\* See *Burrill on Assignments*, 38.

Strictly, the state of a person, not engaged in trade, who is unable to pay his debts. This is the sense of the word in English law, as distinguished from *bankruptcy*; but the distinction does not seem to be recognised in the United States. 2 *Steph. Com.* 213. *Brande.* See *Bankruptcy, Solvency, Insolvent*.

INSOLVENT. [from Lat. *in*, priv. and *solvens*, paying, from *solvere*, to pay.] One who cannot or does not pay; one who is unable to pay his debts; one who is not solvent; one who has not present means or property sufficient to pay his debts.—

One who is unable to pay all his debts from his own means, or whose debts cannot be collected out of his means by legal process.\* Cowen, J. 4 *Hill's* (N. Y.) *R.* 650, 652.—A trader who is not in a condition to pay his debts in the ordinary course, as persons carrying on trade usually do. Thomas, J. 3 *Gray's R.* 600; citing 1 *M. & S.* 338. 3 *Dowl. & Ryl.* 218. 4 *Hill*, 650. 4 *Cush.* 134. See *Solvent*.

Strictly, a person not engaged in trade, who is unable to pay his debts. See *Bankrupt*.

**INSPECTION.** In practice. The examination of writings not under seal, and books, in the possession of a party, which the opposite party may have, on obtaining a rule of court or a judge's order for the purpose. 1 *Tidd's Prac.* 589—596. It is analogous to the *oyer* of deeds or writings under seal.

**INSPECTION.** Official view or examination of commodities or manufactures, to ascertain their quality, under some statute requiring it.

**INSPECTION, Trial by.** A mode of trial formerly in use in England, by which the judges of a court decided a point in dispute, upon the testimony of their own sense, without the intervention of a jury. This took place in cases where the fact upon which issue was taken must, from its nature, be evident to the court from ocular demonstration, or other irrefragable proof; and was adopted for the greater expedition of a cause. 3 *Bl. Com.* 331. In this way, questions whether a party were an infant or not, or whether idiot or not, whether an injury were maihem or no maihem, and the like, might be determined, the judges deciding by *inspection* and examination of the party. *Id.* 332, 333. But this has long been out of use. 3 *Steph. Com.* 582, note (u).

**INSPEXIMUS.** Lat. In old English law. We have inspected. An exemplification of letters patent, so called from the emphatic word of the old forms. 5 *Co.* 53 b, *Page's case*.

**INSTANCE.** [Lat. *instantia*, from *instare*, to press or urge.] In pleading and practice. Solicitation, properly of an earnest or urgent kind. An act is often said to be done at a party's "special *instance* and request."

In the English courts, causes of *instance* are those which proceed at the solicitation of some party. *Hallifax, Anal.* b. 3, c. 11.

**INSTANCE COURT.** The ordinary Court of Admiralty, as distinguished from the *prize court*, which is held in times of war. 1 *Kent's Com.* 352. These are sometimes treated in the English books as perfectly distinct tribunals. 2 *Chitt. Gen. Pr.* 508. But they appear rather to be different branches of jurisdiction of the same court. 1 *Kent's Com.* 354, 356. In the United States, the equal jurisdiction of the admiralty as an instance and as a prize court, is now definitely settled. *Id. ibid.*

**INSTANS.** L. Lat. An instant. *Instans est finis unius temporis et principium alterius*; an instant is the end of one period of time, and the beginning of another. *Co. Litt.* 185. See *Instant*.

**INSTANT.** [Lat. *instans*.] An indivisible point of time.\* Defined by the old logicians to be *Unum indivisibile in tempore, quod non est tempus, nec pars temporis, ad quod tamen partes temporis copulantur*; one indivisible thing in time, which is not time, nor a part of time, to [or by] which, however, the parts of time are conjoined. *Cowell.* See *Plowd.* 110. According to Lord Coke, in consideration of law, there is a priority of time in an instant. *Co. Litt.* 185 b.

**INSTANTER.** Lat. Instantly; forthwith; without any delay, or the allowance of any time. 4 *Bl. Com.* 396. This term, however, as generally used, does not import an absolutely instantaneous succession, but only that which is comparatively so. Thus, in practice, *instante* is frequently said to mean "within twenty-four hours," and it is sometimes so defined by express rule of court. 1 *Tidd's Pr.* 567, note. 3 *Chitt. Gen. Pr.* 112. See *Immediately, Instant, Forthwith, Fraction*.

**INSTANTIA.** L. Lat. In old practice. Despatch; speedy prosecution. *Fleta*, lib. 2, c. 65, § 10.

**INSTAR.** Lat. Likeness; the likeness, size or equivalent of a thing. *Instar dentium*; like teeth. 2 *Bl. Com.* 295. *Instar omnium*; equivalent or tantamount to all. *Id.* 146. 3 *Id.* 231.

**INSTAURUM.** L. Lat. In old English deeds. A stock or store of cattle, and other things; the whole stock upon a farm, including cattle, wagons, ploughs, and all other implements of husbandry. 1 *Mon. Ang.* 548. *Fleta*, lib. 2, c. 68, § 1; c. 72, § 7. *Terra instaurata*; land ready stocked, or furnished with all things necessary to carry on the use or occupation of a farm.

*Et reddat heredi, cum ad plenam etatem venerit, terram suam totam instauratam de carucis et omnibus aliis rebus;* and he shall restore to the heir, when he shall arrive at full age, all his land, stocked with ploughs and all other things. *Magna Carta*, c. 5. *Cowell*.

**INSTITOR.** Lat. [from *instare*, to press or urge, to attend diligently.] In the civil law. A person put in charge of a shop, with authority to buy and sell, (*qui tabernæ ad emendum vendendumque præponitur.*) *Dig.* 14. 3. 18. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1209. *Story on Agency*, § 8.

A person having charge of buying or selling, without any particular place, (*qui sine loco ad eundem actum præponitur.*) *Dig.* 14. 3. 18.

A person to whom the transaction of any particular business was committed, (*cuiuslibet aliæ negotiationi præpositus.*) *Dig.* 14. 3. 3. *Inst.* 4. 7. 2.

**INSTITORIA ACTIO.** Lat. In the civil law. The name of an action given to those who had contracted with an *institor*, (q. v.) to compel the principal to performance. *Inst.* 4. 7. 2. *Dig.* 14. 3. 1. *Cod.* 4. 25. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1211. *Story on Agency*, § 426.

**INSTITUERE.** Lat. In old English law. To establish, enact or ordain. *Hæc sunt instituta quæ Edgarus rex consilio sapientum suorum instituit;* these are the establishments which king Edgar, with the advice of his wise men, established. 1 *Bl. Com.* 148. *Hæc sunt judicia quæ sapientes, consilio regis Ethelstani, instituerunt;* these are the judgments which the wise men, with the advice of king Athelstan, established. *Id. ibid.*

In the civil law. To prepare, provide or furnish. *Calv. Lex.*

To name, designate or appoint, as an heir. *Id. Dig.* 28. 5. See *Hæres institutus*.

To appoint, or put in one's place, as an attorney. *Calv. Lex.*

To move or commence, as an action. *Id.*  
In feudal law. To invest or give possession. *Id.*

**INSTITUTA.** Lat. Institutes. The Institutes of Justinian are so called in *Fléta*, lib. 3, c. 3, § 12. This corresponds with the Latino-Gr. *ἰνστιτούταις*, in *Nov.* 18, c. 9. *Nov.* 21, c. 1.

**INSTITUTE.** [Lat. *instituere*, q. v.] To commence; to set on foot; as to *insti-*

*tute* proceedings; to institute an inquiry; to institute an action.

**INSTITUTES OF JUSTINIAN.** [Lat. *Institutiones.*] Elements of the Roman law, in four books, compiled by Tribonian, Theophilus and Dorotheus, by the order, and under the direction of the emperor Justinian, and published on the 21st day of November, A. D. 529; being one of the principal component parts or general divisions of the *Corpus Juris Civilis*. *Proæm. de Confirm. Inst.* 3. 4, &c. 1 *Mackeld. Civ. Law*, 56, § 67. 1 *Bl. Com.* 81. 1 *Kent's Com.* 538. They were composed, as Justinian himself explains in the *proæmium* or introduction, for the benefit of students of the law, to whom in fact they are formally addressed, (*cupida legum juventuti—ut liceat prima legum cunabula discere, &c.*) in order to facilitate their studies, which before had been embarrassed by many difficulties and delays. *Proæm.* § 3. According to Justinian's own account, they were compiled from all the older elementary works of a similar character, (*ex omnibus antiquorum institutionibus*), but principally from what he calls the Commentaries of Caius or Gaius, (*præcipue ex commentariis Caii nostri*), embracing both his *Institutes* and *Res Quotidianæ*, (*tam institutionum, quam rerum quotidianarum*;) and also from many other commentaries, (*aliisque multis commentariis.*) *Id.* § 6. Since the discovery, in 1816, of a copy of the Institutes of Gaius, it has appeared that the Institutes of Justinian are little more than a new edition of that work, omitting what had become obsolete, and including the new constitutions of Justinian as far as they had then been issued. 1 *Mackeld. Civ. Law*, 56, § 67. 1 *Kent's Com.* 538, and note.

The division of the Institutes into four books was by Justinian's own order, so as to embrace the first elements of the whole science of the law; (*in quatuor libros eadem institutiones partiiri jussimus, ut sint totius legitimæ scientiæ prima elementa.*) *Proæm.* § 4. Each book is again divided into titles, and each title, after a short *principium*, or introduction, into paragraphs or sections. The most common and simple mode of citation is by giving the numbers of the book, title and section, thus: *Inst.* 4. 7. 2; meaning book 4, title 7, section 2; or, where the *principium* is referred to, *Inst.* 4. 7, pr. Another method is by naming the section first, and using the

letter J. instead of *Inst.* thus: § 2, J. 4. 7. The ancient mode of citation was by giving the heading of the title, and the initial words of the paragraph, thus: § fratris vero, J. de nuptiis, which answers to the modern *Inst.* 1. 10. 3.

**INSTITUTES, (or INSTITUTIONS) OF GAIUS.** [Lat. *Gaii Institutiones.*] An elementary work of the Roman jurist Gaius; important as having formed the foundation of the Institutes of Justinian, (q. v.) These Institutes were discovered by Niebuhr in 1816, in a *codex rescriptus* of the library of the cathedral chapter at Verona, and were first published at Berlin in 1820. Two editions have appeared since. 1 *Mackeld. Civ. Law*, 35.

**INSTITUTIO.** In old English law. Institution (of a clerk.) Called by Bracton a kind of spiritual marriage. *Bract.* fol. 242. See *Institution*.

**INSTITUTION.** [Lat. *institutio*, from *instituere*, to place in, to establish or ordain.] In English ecclesiastical law. A kind of investiture of the spiritual part of a benefice, by which the cure or care of the souls of the parish is committed to the clerk. 1 *Bl. Com.* 390. It was anciently done by the bishop saying to the clerk who was presented, *Instituto te rectorem talis ecclesiæ, cum cura animarum, et accipe curam tuam et meam*; I institute or ordain thee rector of such a church, with cure of souls, and take thy cure (or charge) and mine. *Cowell*.

**INSTITUTIONES.** Lat. [from *instituere*, to instruct, or educate.] Works containing the elements of any science; institutions, or institutes. One of Justinian's principal law collections, and a similar work of the Roman jurist Gaius, are so entitled. See *Institutes*.

**INSTRUCTION.** In French law. The means used and formality employed to prepare a case for trial. *Bouvier*.

**INSTRUCTIONS.** In practice. Written statements of facts, intended as guides to attorneys and counsel, in the prosecution and defence of actions, the preparation of pleadings, and in conducting examinations and trials. See 3 *Chitt. Gen. Pr.* 117—124, 429.

**INSTRUMENT.** [Lat. *instrumentum*, from *instruere*, to provide or furnish.] A mean or help to do a thing; a writing, as the *means* of giving formal expression or effect to some act; a writing expressive of

some act, contract, process or proceeding, as a deed, writ, &c.

*Instruments of evidence* are the media through which the evidence of facts, either disputed or required to be proved, is conveyed to the mind of a judicial tribunal; and they comprise persons as well as writings. *Best on Evid.* 139, § 113.

**INSTRUMENTUM.** Lat. [from *instruere*, to provide or furnish.] In the civil law. Furniture; equipment; articles provided or necessary for the carrying on of any business, art or occupation; tools of a trade, &c. *Dig.* 33. 7. The tackle or equipments of a vessel. *Id.* 33. 7. 29.

Every thing with which a cause could be provided, (*omnia quibus causa instrui potest*,) including both evidences and persons, (*tam testimonia quam personæ*.) *Dig.* 22. 4. 1. See *Id.* 50. 16. 99. 2.

A contract containing the evidence of some agreement, called in Gr. *συμβολαιον*, especially such as were drawn up by a notary, tabellion or public officer. See *Nov.* 47. The word had the same sense in feudal law. *Feud. Lib.* 2, tit. 2.

**INSUFFICIENCY.** In equity pleading. That quality of an answer when it does not fully and specifically reply to the specific charges in the bill, or where there is some material allegation, charge or interrogatory contained in the bill, which has not been fully answered. *Mitford's Ch. Pl.* (Moulton's ed. 1849,) 376, and note.

**INSULA.** Lat. An island. *Inst.* 2. 1. 22. *Dig.* 41. 1. 7. 3. *Bract.* fol. 9. *Fleta*, lib. 3, c. 2, § 6.

In the Roman law. A house in a city not adjoining others, but having a vacant space all around it. *Calv. Lex. Dig.* 19. 2. 30. *Id.* 32. 91. 6. An insulated house.

A house of any kind, especially one occupied by different families. *Calv. Lex. Adam's Rom. Ant.* 57.

**INSULTUS.** Lat. [from *insilire*, to assault.] In old English law. An assault. *Insultum fecit et verberavit*; made an assault and beat. *Reg. Orig.* 92.

**INSUPER.** Lat. Moreover; over and above.

An old exchequer term, applied to a charge made upon a person in his account. *Blount*.

**INSURANCE, Assurance.** [Fr. *assurance*; L. Lat. *assecuratio, aversio periculi*.] A contract whereby, for a stipulated consideration, one party undertakes to in-

demnify the other against certain risks. 1 *Phillips on Ins.* 1. The party undertaking to make the indemnity is called the *insurer*, (and sometimes the *underwriter*;) the party to be indemnified, the *insured* or *assured*; the agreed consideration, a *premium*; and the instrument containing the contract, a *policy*.\* *Id. ibid.* See *Assurance, Aversio periculi, Fire Insurance, Life Insurance, Marine Insurance, Policy, Premium*.

**INSURANCE BROKER.** A broker through whose agency insurances are effected. 3 *Kent's Com.* 260. See *Broker*.

**INTAKERS.** In old English law. A kind of thieves inhabiting Redesdale, on the extreme northern border of England; so called because they *took in* or received such booties of cattle and other things as their accomplices, who were called *outparters*, brought in to them from the borders of Scotland. *Stat. 9 Hen. V. c. 8. Spelman. Cowell.* See *Outparters*.

**INTEGER.** Lat. Entire and whole; fresh; new; untouched, as a thing originally or at first was. *Res integra*; a new matter or question; one untouched by *dictum* or decision. 2 *Kent's Com.* 177. *In integrum restituere*; to restore a thing to its original state. *Calv. Lex.* See *Restitutio, Res integra*.

**INTELLECTUS.** Lat. [from *intelligere*, to understand.] In old English law. Meaning; sense; signification. *Bract. fol. 34. Fleta, lib. 3, c. 14, § 4.*

**INTEND.** [from Lat. *intendere*, from *in*, to or towards, and *tendere*, to stretch or strain.] To fix the mind upon a thing; to mean; to determine; to act with a full knowledge of consequences, and with a determination or willingness to produce such consequences. Every man is presumed to intend the natural and probable consequences of his own voluntary acts. 1 *Greenl. Evid.* § 18. Lord Ellenborough, 3 *M. & S.* 11, 15. *Burr. Circ. Evid.* 38, 47.

**INTENDERE.** Lat. In the civil law. To claim at law, or in an action. *Si [actor,] cum ei decem aurei deberentur, quinque sibi dari oportere, intenderit*; if a plaintiff, where ten aurei were due him, should claim that five only ought to be paid him. *Inst.* 4. 6. 34, 35.

In old English law. To apply one's self; to attend diligently, as to the duties of an office. *Quod talem eligi faciat qui melius et sciat, et velit, et possit officio illi intendere*; that he cause to be chosen such

a person as best knows how, and is willing and able to discharge that office. 1 *Bl. Com.* 347.

**INTENDMENT.** [L. Fr. *entendment*; L. Lat. *intellectus*.] Understanding; judgment; intention.

**INTENDMENT OF LAW.** [L. Lat. *intellectus legis*.] The understanding or intelligence of the law. *Co. Litt.* 78 b. The judgment, intention, or true meaning of the law. *Cowell. Blount.* Regularly, judges ought to adjudge according to the common intendment of law. *Co. Litt.* 78 b.

A presumption of law. *Best on Pres.* § 15. *Burr. Circ. Ev.* 45.

**INTENT.** [from Lat. *intendere*, from *in*, to or towards, and *tendere*, to stretch or strain.] In the law of evidence. Determination to act in a particular manner; design; meaning; purpose. Literally, the stretching of the mind towards an object; the fixed direction of the mind towards a particular object.

*Intent* expresses mental action at its most advanced point, or as it actually actually accompanies an outward, corporal act which has been determined on. *Intent* shows the presence of *will* in the act which consummates a crime. It is the exercise of intelligent will; the mind being fully aware of the nature and consequences of the act which is about to be done, and with such knowledge, and with full liberty of action, willing and electing to do it. *Burr. Circ. Evid.* 284, and notes. See *Intent*.

Intent is clearly distinguishable from *motive*, which is a moral impulse, the original moving cause of crime. See *Motive*.

**INTENTARE.** L. Lat. To prosecute. *Utraque [actio] simul poterit intentari*; both actions may be prosecuted at the same time. *Bract. fol. 112 b. Fleta, lib. 2, c. 1, § 5.*

**INTENTIO.** Lat. [from *intendere*, to intend or design.] Intention; design; meaning or purpose. *Intentio cæta mala*. A blind, or obscure meaning is bad, or ineffectual. 2 *Bulstr.* 179. Said of a testator's intention. *Id. ibid.*

*Intentio inservire debet legibus, non leges intentioni.* The intention [of a party] ought to be subservient to [or in accordance with] the laws, not the laws to the intention. *Co. Litt.* 314 a, b.

*Intentio mea imponit nomen operi meo.*

My intention gives name to my act. *Hob.* 123. See *Affectio*.

INTENTIO. Lat. [from *intendere*, to pursue or claim.] In the civil law. The formula by which the plaintiff (*actor*) preferred his suit or made his claim against the defendant before the *prætor*. *Si minus intentione suâ complexus fuerit actor quam ad eum pertineat*; if the plaintiff should embrace in his demand less than what actually belongs to him. *Inst.* 4. 6. 34.

In old English practice. The plaintiff's or demandant's count, or declaration in real actions. *Fleta*, lib. 4, c. 7. *Cum partes in judicio comparuerint, proponat mulier per se, vel per attornatum suum, intentionem suam, in hunc modum, &c.*; when the parties have appeared in court, the woman [demanding dower] shall offer, by herself or by attorney, her count, in this manner: "This shows to you B. (*hoc vobis ostendit B.*) who was the wife of C. that A. unjustly deforces her of the third part of so much land, with the appurtenances, in such a town; and unjustly so, because the aforesaid C. formerly her husband, endowed her thereof at the church door, when he espoused her, and who was able to endow her thereof; and if he will acknowledge this, it will be agreeable to her; if not, she hath sufficient proof thereof, or thereupon will produce a sufficient suit, (*inde producat sectam sufficientem.*") *Bract.* fol. 296 b, 297. Otherwise called *narratio*. *Fleta*, lib. 6, c. 16.

INTENTION. [See *Intent.*] Meaning; will; purpose; design. "The intention of the testator, to be collected from the whole will, is to govern, provided it be not unlawful or inconsistent with the rules of law." 4 *Kent's Com.* 534.

INTER. Lat. Between; among.

INTER ALIA. Lat. Among other things. A term anciently used in pleading, especially in reciting statutes, where the whole statute was not set forth at length. *Inter alia enactatum fuit*; among other things it was enacted. See the observations of Montague, C. J. in *Dive v. Maningham*, *Plowd.* 65.

INTER ALIOS. Lat. Between other parties. *Inter alios res gestas aliis non posse præjudicium facere sæpe constitutum est*; that things done between others cannot prejudice third parties, has often been determined. *Cod.* 7. 60. 1, 2. See *Res inter alios*.

INTER APICES JURIS. L. Lat.

Among the niceties, or subtleties of the law; among the extreme doctrines of the law. *Story*, J. 1 *Gallison's R.* 192, 200.

INTER BRACHIA. L. Lat. Between her arms. *Fleta*, lib. 1, c. 35, §§ 1, 2.

INTER CÆTEROS. Lat. Among others; in a general clause; not by name (*nominatim.*) A term applied, in the civil law, to clauses of disinheritance in a will. *Inst.* 2. 13. 1. *Id.* 2. 13. 3.

INTER CANEM ET LUPUM. Lat. Between dog and wolf. A term anciently used to signify twilight, from the uncertain nature of the light, which rendered it difficult to distinguish one animal from another, (*cum lupus à cane non fit cognoscibilis.*) *Spelman*, voc. *Canis*. *Cowell*.

INTER PARTES. L. Lat. Between parts or parties. In case of an indenture, the deed is always formally described as made *inter partes*; that is, as made between such an one, of the one part, and such another, of the other part. 1 *Steph. Com.* 449. "Where there is a deed *inter partes*, that is, a deed importing to be between the persons who are named in it, as executing the same, and not, as some deeds are, general to 'all people,' the immediate operation of the deed is to be confined to those persons who are parties to it; no stranger to it can take under it except by way of remainder, nor can any stranger sue upon any of the covenants it contains." Lord Ellenborough, 3 *M. & S.* 322.

INTER QUATUOR PARIETES. L. Lat. Between four walls. *Fleta*, lib. 6, c. 55, § 4.

INTER SESE. Lat. Between or among themselves. *Story on Partn.* § 405.

INTER VIVOS. Lat. Between living persons. Ordinary gifts (*donationes*) are so called to distinguish them from such as are made in contemplation of death, (*mortis causâ.*) A term of the civil law, introduced into the English law at an early period. *Inst.* 2. 7. 2. *Bract.* fol. 11. 2 *Kent's Com.* 438.

INTERCALARE. Lat. [from *inter*, between or among, and O. Lat. *calare*, to call.] In the civil law. To introduce or insert among or between others; to introduce a day or month into the calendar; to intercalate. *Dig.* 50. 16. 98, pr.

INTERCALARIS. Lat. [from *intercalare*, q. v.] In the civil law. Inserted among others; additional (*additicius.*) *Dig.* 50. 16. 98. 1. *Mensis intercalaris*

*constat ex diebus viginti octo*; an intercalary month consists of twenty-eight days. *Id.* 50. 16. 98. 2.

**INTERCHANGEABLY.** [L. Lat. *alternatim*.] In the way, mode or form of exchange or interchange. A term constantly used in the concluding clause of indentures, (In witness whereof, the said parties have hereunto *interchangeably* set their hands and seals;) and properly importing not only an execution by all the parties, but an actual interchange of signatures and seals, such as takes place in the case of instruments executed in duplicate, or in part and counterpart, where the signature and seal of each party are affixed to the part given to the other. It is used, however, every day in deeds signed by the grantor only, but will not be held to import a signature by the grantee. 7 *Penn. St.* (Barr's) *R.* 329.

**INTERCHARAXARE.** L. Lat. In old European law. To interline. *Spelman*.

**INTERCOMMON.** To enjoy a common mutually or promiscuously with the inhabitants or tenants of a contiguous township, vill, or manor. 2 *Bl. Com.* 33. 1 *Crabb's Real Prop.* 271, § 290.

**INTERCOMMONING.** A mutual privilege existing between the inhabitants or tenants of two or more adjoining townships, or manors, of pasturing their cattle in the lands or commons of each other.\* *Termes de la Ley. Cowell.* It is the same with *common because of vicinage*, (q. v.)

**INTERCOURSE.** [Lat. *intercursus*, from *inter*, between, and *currere*, to run.] Communication; literally, a *running*, or passing *between* persons or places; commerce. See the *Passenger cases*, 7 *Howard's R.* 283—573.

**INTERDICT.** [Lat. *interdictum*, from *interdicere*, to prohibit, or *inter* (*duos*) *dicere*, to pronounce between two.] In the civil law. A decree of the *prætor*, or form of words by which he commanded something to be done, or prohibited it from being done; (*formæ atque conceptiones verborum, quibus prætor aut jubebat aliquid, aut fieri prohibebat*;) and which was chiefly used where a contention arose between parties concerning possession, or *quasi* possession. *Inst.* 4. 15, pr. *Gaius*, 4. 139. They were of three kinds, prohibitory, (*prohibitoria*;) restoratory, (*restitutoria*;) and exhibitory, (*exhibitoria*.) *Inst.* 4. 15. 1. The first resembled the modern writ of injunction, (3 *Bl. Com.* 442;)

and it was supposed, even in Justinian's time, that these alone, from their etymology (*interdicere*, to prohibit,) ought to be called *interdicts*, and that those of the restoratory and exhibitory kind should properly be called *decrees*; but the practice was otherwise, and to reconcile it with the etymology, a new derivation was suggested in the Institutes, viz: that these forms were called *interdicta, quia inter duos dicuntur*; (because they were pronounced between two contending parties.) *Inst.* 4. 15. 1. And see *Dig.* 43. 1. *Cod.* 8. 1.

An interdict was distinguished from an action, (*actio*,) properly so called, by the circumstance that the prætor himself decided, in the first instance, (*principaliter*,) on the application of the plaintiff, without previously appointing a *judex*, by issuing a decree commanding what should be done, or left undone. *Gaius*, 4. 139. It might be adopted as a remedy in various cases where a regular action could not be maintained, and hence interdicts were at one time more extensively used by the prætor than the *actiones* themselves; afterwards, however, they fell into disuse, and in the time of Justinian were generally dispensed with. 1 *Mackeld. Civ. Law*, 211, § 209. *Inst.* 4. 15. 8.

**INTERDICT, Interdiction.** [Lat. *interdictio*; from *interdicere*, to forbid.] In canon law. An ecclesiastical censure, prohibiting the administration of divine ordinances, or the performance of religious services. *Termes de la Ley. Cowell. Stat.* 22 *Hen.* VIII. c. 12.

**INTERDICT.** In Scotch practice. An injunction. *Bell's Dict.* 7 *Bell's Appeal Cases*, 272.

**INTERDICTUM.** Lat. In the civil law. An interdict; a species of action. *Dig.* 44. 7. 37, pr. See *Interdict*.

**INTERDICTUM SALVIANUM.** Lat. In the civil law. The Salvian interdict. A process which lay for the owner of a farm, to obtain possession of the goods of his tenant who had pledged them to him for the rent of the land. *Inst.* 4. 15. 3. *Dig.* 43. 33.

**INTERESSE.** Lat. In old English law. The interest of money, as distinguished from the principal, (*sors*.) *Super trecentis marcis de sorte, et centum marcis de interesse*; for three hundred marks of principal, and one hundred marks of interest. 40 *Hen.* III. 2 *Prynne's Collect.* 360. *Cowell*.

An interest in lands. *Bract*. fol. 18 b. According to Lord Coke, this word, *ex vi termini*, in legal understanding extends to estates, rights and titles that a man has of, in, to, or out of lands, for he is truly said to have an *interest* in them; and by the grant of *totum interesse suum*, [all his interest] in such lands, as well reversions as possessions in fee simple, shall pass. *Co. Litt.* 345 b.

An interest in a term for years. See *Interesse termini*.

An interest in a suit. *Allegandum est interesse tuum*; you must set forth your interest. *Clerke's Prax. Cur. Adm.* tit. 34, 35.

INTERESSE TERMINI. L. Lat. An interest in a term, (literally, an interest of a term;) a right to the possession of a term at a future time, as distinguished from a term in possession; \* a future term. *Co. Litt.* 345 b. An expression used to denote the particular interest of a lessee for a term of years, before actual entry on the land demised. *Id.* 270 a. The bare lease does not vest any estate in the lessee, but only gives him a right of entry, which is called his *interest* in the term, or *interesse termini*. When he has actually entered, and not before, the estate is completely vested in him. 2 *Bl. Com.* 144, 314. 1 *Steph. Com.* 268, 476. An *interesse termini* is a right or interest only, and not an estate. 4 *Kent's Com.* 97, and note. It is, however, so far in the nature of an estate, that even before entry the lessee may grant it over to another. 1 *Steph. Com.* 268. *Burton's Real Prop.* 18, pl. 61. *Shep. Touch.* 242. 2 *Crabb's Real Prop.* 227, § 1269. And see, as to the rule in American law, 1 *Hilliard's Real Prop.* 200.

INTEREST. [L. Lat. *interesse*.] The most general term that can be employed to denote a property in lands or chattels. In its application to lands or things real, it is frequently used in connection with the terms *estate*, *right* and *title*, and, according to Lord Coke, it properly includes them all. *Co. Litt.* 345 b. See *Interesse*. It is made the synonyme sometimes of *estate*, and sometimes of *right*, though with less accuracy as to the former term; for though every estate is an interest, every interest is not an estate, as in the case of an *interesse termini*, (q. v.) *Estate*, however, is the term most commonly used in dispositions of property, as wills, &c. being regarded as the most comprehensive word of conveyance. See *Estate*.

INTEREST. Concern, share; advantage, benefit or profit; participation in benefit. See this sense of the word considered by Shaw, C. J. 11 *Metcalf's R.* 390.

INTEREST. [L. Lat. *interesse*; Lat. *accessio*, *usura*, *fœnus*.] A sum of money, or other certain profit, paid or allowed by way of compensation for the loan or use of another sum, and as an increase or addition (*accessio*) to it. Called, when unlawful in its amount, usury. 2 *Bl. Com.* 454. 2 *Steph. Com.* 137. See 2 *Kent's Com.* 460, 461, and notes. 1 *N. Y. Rev. St.* [771,] 760. 3 *Comstock's R.* 355. 4 *Id.* 477. *United States Digest*, Interest.

Interest is an incident which the law gives the creditor, upon failure of the debtor to pay the principal. 24 *Mississippi R.* 369. "When the principal sum is ascertained to be due at a particular period, and remains unpaid, without a sufficient excuse for its non-payment, the interest follows as an incident." Chilton, C. J. 22 *Alabama R.* 360.

INTEREST. In the law of evidence. The concern, benefit or advantage which a witness, called to testify in a cause, has in its result; the fact that he will gain or lose by the event of the trial.\* The interest to disqualify a witness must be some legal, certain and immediate interest, however minute, in the result of the cause, or in the record, as an instrument of evidence, acquired without fraud. 2 *Stark. Evid.* (part 4,) 744.

INTEREST. Lat. It concerns; it is for the advantage or benefit. *Interest reipublicæ*; it concerns the state or commonwealth; it is for the benefit or welfare of the community; it is for the common good. See *Expedit*.

Interest (*imprimis*) *reipublicæ ut pax in regno conservetur, et quæcunque paci adversentur provide declinentur*. It especially concerns the state that peace be preserved in the kingdom, and that whatever things are against peace be prudently avoided. 2 *Inst.* 158.

Interest *reipublicæ ne maleficia remaneant impunita*. It concerns the state that crimes remain not unpunished. *Jenkins' Cent.* 30, 31, case 59. *Wingate's Max.* 501.

Interest *reipublicæ quod homines conserventur*. It concerns the state that [the lives of] men be preserved. 12 *Co.* 62, *Mouse's case*.

**Interest reipublicæ res judicatas non rescindi.** It concerns the state that things adjudicated be not rescinded. 2 *Inst.* 360. It is a matter of public concern that solemn adjudications of the courts should not be disturbed. See *Best on Evid.* 41, 44.

**Interest reipublicæ suprema hominum testamenta rata haberi.** It concerns the state that men's last wills be held valid, [or allowed to stand.] *Co. Litt.* 236 b.

**Interest reipublicæ ut carceres sint in tuto.** It concerns the state that prisons be safe places of confinement. 2 *Inst.* 589. 3 *P. Wms.* 484.

**Interest reipublicæ ne sua quis male utatur.** It concerns the state that persons do not misuse their property. 6 *Co.* 36 a, *The Dean and Chapter of Worcester's case*. "It is unreasonable that a lessee should, at his pleasure, commit waste and destruction, which is against the commonwealth." *Id. ibid.*

**Interest reipublicæ ut sit finis litium.** It concerns the state that there be an end of lawsuits. *Co. Litt.* 303. It is for the general welfare that a period be put to litigation. A maxim constantly quoted, and with a great variety of application; as to express the policy of acts of limitation, the duty of courts to apply legal remedies efficiently, the importance of finality in judicial decisions, the doctrine of estoppel, &c. 3 *Bl. Com.* 308. *Broom's Max.* [244, 254.] 2 *Smith's Lead. Cas.* 238, note. *Best on Evid.* 36, § 41. "An old maxim, deeply fixed in the fundamentals of the common law." *Story, J.* 1 *Sumner's R.* 482, 492.

**INTEREST OR NO INTEREST.** A term applied to a species of marine insurance, otherwise called *wagering*, where the insured had in fact no property on board. This was prohibited in England by statute 19 *Geo. II. c.* 37. 2 *Bl. Com.* 460. 2 *Steph. Com.* 182. See *Wager policy*.

**INTERFECTIO.** Lat. [from *interficere*, to kill.] In old English law. A killing. *Felonica interfectio*; a felonious killing. *Comb.* 39.

**INTERLAQUEARE.** L. Lat. In old practice. To link together, or interchangeably. Writs were called *interlaqueata*, where several were issued against several parties (as warrantors) residing in different counties, each party being summoned by a separate writ to warrant the tenant, together with (*simul cum*) the other warrantors. *Fleta*, lib. 5, c. 4, § 2. They were, in other words, *simul cum* writs.

**INTERLESSE.** L. Fr. Interlined. *Kelham*.

**INTERLINEATION.** [from Lat. *inter*, between, and *linea*, a line.] In conveyancing. A writing between lines. Addition to a written instrument, by inserting one or more words between the lines.

**INTERLOCUTIO.** L. Lat. Imparlance. See *Imparlance*.

**INTERLOCUTOR.** In Scotch practice. An order or decree of court; an order made in open court. 2 *Swinton's R.* 362. *Arkley's R.* 32.

**INTERLOCUTOR OF RELEVANCY.** In Scotch practice. A decree as to the relevancy of a libel or indictment in a criminal case. 2 *Alis. Crim. Pr.* 373.

**INTERLOCUTORY.** [L. Lat. *interlocutorius*, from *interloqui*, to speak between, to determine intermediately.] In practice. Intermediate; something done or determined between the commencement and termination of an action. See *infra*.

**INTERLOCUTORY COSTS.** In practice. Costs accruing upon proceedings in the intermediate stages of a cause, as distinguished from final costs; such as the costs of motions. 3 *Chitt. Gen. Pr.* 597.

**INTERLOCUTORY DECREE.** In equity practice. A preliminary or intermediate decree; a decree which does not determine the suit, but directs some further proceedings before a final decree can be had.\* 3 *Bl. Com.* 452. A decree pronounced for the purpose of ascertaining matter of law or fact preparatory to a final decree. 1 *Barbour's Ch. Pr.* 326, 327.

**INTERLOCUTORY JUDGMENT.** In practice. A preliminary or intermediate judgment.\* A judgment given in the course of an action, upon some plea, proceeding or default, which is only *intermediate*, and does not finally determine or complete the suit; such as a judgment for the plaintiff on a plea in abatement, in which it is considered by the court that the defendant do answer over, (*respondeat ouster*;) that is, put in a more substantial plea. But the interlocutory judgments most usually spoken of are those incomplete judgments, whereby the *right* of the plaintiff is established, but the *quantum* of damages sustained by him is not ascertained; which is the character of most judgments rendered on default.\* 3 *Bl. Com.* 396, 397. 1 *Tidd's Pract.* 568.

**INTERLOCUTORY ORDER.** In practice. An order made during the progress

of a suit, upon some incidental matter which arises out of the proceedings.\* *Termes de la Ley.*

**INTERLOCUTORY SENTENCE.** In the civil law. A sentence upon some indirect question arising from the principal cause. *Hallifax, Anal.* b. 3, ch. 9, num. 40.

**INTERLOQUELA.** L. Lat. Imparlance. See *Imparlance*.

**INTERLOQUITOR.** In old Scotch practice. An interlocutory decree or decision. 3 *State Trials*, 689. See *Interlocutor of relevancy*.

**INTERNATIONAL LAW.** [Lat. *jus inter gentes*.] The law which regulates the intercourse of nations; the law of nations. 1 *Kent's Com.* 1, 4. The customary law which determines the rights and regulates the intercourse of independent states in peace and war. 1 *Wildman's Intern. Law*, 1.

A distinction has been made by some writers between *international law* and the *law of nations*. See *Wheaton's Elem. Intern. Law*, 19, note (a.) It is remarked by Chancellor Kent, that international law seems to relate more particularly to rights and duties arising from social, commercial and pacific intercourse between different nations, and may be subdivided into public and private international law. 1 *Kent's Com.* 51, note. Other writers advocate the use of the term, in place of that of the *law of nations*, as more appropriate and expressive. See *Wheat. El. Int. Law, ubi supra*.

**INTERNUNCIUS.** Lat. [from *inter*, between, and *nuncius*, a messenger.] A messenger between two parties; a go-between. Applied to a broker, as the agent of both parties. 4 *Rob. Adm. R.* 204.

**INTERPLACITARE.** L. Lat. [from *inter*, between, and *placitare*, to plead or litigate.] To inquire into a point arising incidentally or collaterally in a cause, before determining the principal matter; to interplead. *Spelman*.

**INTERPLEAD,** *Interplede, Enterplede.* [from Fr. *entreplaidier*, from *entre*, between, and *pleder*, to litigate; L. Lat. *interplacitare*.] In ancient practice. To discuss or try a point incidentally arising, before the principal cause can be determined, by making the parties concerned litigate it between them. *Blount. Bro. Abr.* Enterpleder.

In modern practice. To settle a question of right to certain property or money

adversely claimed, by the litigation of the claimants, for the benefit or security of a third person who holds the property or money claimed, but is in doubt to which party he shall pay or deliver it.\* See *infra*.

**INTERPLEADER.** In practice. A mode of obtaining the settlement of a question of right to certain property or money adversely claimed, by compelling the parties claiming it to *interplead*, that is, to *litigate* the title *between themselves*, for the benefit and relief of a third person of whom they claim. Thus, where an article of property, sum of money or fund in the hands of a person having himself no interest in or claim to it, is claimed adversely by two or more parties, and such person is in doubt to which of them he shall pay or deliver it, he may relieve himself from liability or litigation by compelling the claimants to *interplead*, that is, to litigate the title between themselves, instead of litigating it with him. This is usually done in equity by filing what is called a *bill of interpleader*. See 2 *Story's Equity Jur.* §§ 805, 806. 3 *Bl. Com.* 448. 2 *Kent's Com.* 568. *Story on Bailm.* §§ 110—112. 3 *Daniell's Ch. Pr.* (Perkins' ed.) 1753, *et seq.*

In England, by the Interpleader Act, 1 & 2 Will. IV. c. 58, summary proceedings at law are provided for the same purpose, in actions of assumpsit, debt, detinue and trover. 3 *Steph. Com.* 704, 705.

**Interpretari et concordare leges legibus est optimus interpretandi modus.** To interpret, and [in such a way as] to harmonize laws with laws, is the best mode of interpretation. 8 *Co.* 169 a, *Paris Stoughter's case*.

**Interpretatio fienda est ut res valeat.** Interpretation is to be [so] made that the subject of it may have effect. *Jenk. Cent.* 198, case 12.

**Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum.** In cases of ambiguity, such an interpretation should always be made, that what is inconvenient and absurd may be avoided. 4 *Inst.* 328.

**INTERPRETATION.** [Lat. *interpretatio*, from *interpretari*, to interpret; *interpre*, an interpreter. See *Lieber's Hermeneutics*, (1839,) 20, note.] Explanation or exposition of meaning. The explanation or authoritative declaration of the meaning of an instrument, or of some clause or word in it. Sometimes held to be the same with *construction*, and used indifferently with that word; but sometimes distinguished

from it. See *Construction*. As to the interpretation of statutes, see *Sedgwick on Stat. & Const. Law*, chap. 6. 1 *Kent's Com.* 460. As to the interpretation of treaties, see *Id.* 174. *Sedgwick*, chap. 9. As to the interpretation of the constitution of the United States, see 1 *Kent's Com.* 243.

**INTERROGARE.** Lat. In the civil law. To propose a law; to request the passage of it; to move its adoption. *Lex est quod populus Romanus, senatorio magistratu* interrogante, (*veluti consule,*) *constituebat*; a law (that is, *lex*, in the proper sense,) is that which the Roman people, on the proposition or motion of a senatorial magistrate, (such as a consul,) enacted. *Inst.* 1. 2. 4. *Rogare* (q. v.) was more commonly used in the same sense.

In old English practice. To call or demand a party. *Quod faciat eum* interrogari *de comitatu in comitatum*; that he cause him to be demanded from county court to county court. *Bract.* fol. 149.

**INTERROGATORY.** [L. Lat. *interrogatorium*, from *interrogare*, to ask.] In practice. A question in writing. Interrogatories are sets of questions in writing drawn up according to a certain form, and proposed or intended to be proposed to witnesses in a cause, and sometimes to other parties. Where witnesses in a cause are examined out of court, as under a commission issued for the purpose, it is done by means of written *interrogatories* and *cross-interrogatories*, previously prepared and settled between the parties, according to the practice of the court, and annexed to the commission. 2 *Tidd's Pr.* 810—812. 3 *Chitt. Gen. Pr.* 816. 1 *Burr. Pr.* 444.

The ordinary mode of examining witnesses in courts of equity, and other courts proceeding according to the course of the civil law, is upon *interrogatories* and *cross-interrogatories*. 2 *Daniell's Ch. Pr.* (Perkins' ed.) 1045, *et seq.* 4 *Steph. Com.* 25. And interrogatories are also used in proceedings upon attachments for contempts. 1 *Tidd's Pr.* 481.

**INTERRUPTIO.** Lat. [from *interrumpere*, to break through or apart.] Interruption. A term used both in the civil and common law of prescription. *Calv. Lex. Interruptio multiplex non tollit prescriptionem semel obtentam.* Manifold or repeated interruption does not take away or defeat a prescription once obtained. 2 *Inst.* 654.

**INTERRUPTION.** [Lat. *interruptio*, q. v.] In Scotch law. The breaking

through of that possession on which a prescriptive title rests. *Bell's Dict.* A claim of right made by the true proprietor, during the course of prescription. *Whishaw.* The term is also used in the modern English law of prescription. 1 *Crabb's Real Prop.* 348, § 394.

**INTERTIARE,** *Interciare.* L. Lat. [from Fr. *entiercer*.] In old European law. To put into a third hand, (*in manum tertiam ponere*;) to deliver to a third person, (*tertio tradere*;) to call upon or vouch a third person, (*tertium advocare*;) to sequester. *L. Salic.* tit. 49. *Spelman.*

In Saxon law. To call or vouch to warranty, (*ad warrantum provocare*.) *LL. Edw. Conf.* c. 25. *Spelman.*

**INTERVALLUM.** Lat. In old English law. An interval of time or place. *Nisi lucidis gaudeat intervallis*; unless he enjoy lucid intervals. *Bract.* fol. 12. *Dum tamen dilucidis gauderet intervallis*; provided he enjoy lucid intervals. *Id.* fol. 43. See *Id.* fol. 420 b. *Fleta*, lib. 6, c. 40, § 1. *Ex intervallo*; after an interval. *Id.* lib. 2, c. 60, § 2.

**INTERVENIRE.** Lat. [from *inter*, between, and *venire*, to come.] In the civil law. To intervene or come between; to substitute one's self for another; to assume the obligation of another; to assume the prosecution or defence of another's cause; to intercede or supplicate. *Calv. Lex.*

**INTERVENTION.** [Lat. *interventio*, from *intervenire*, q. v.] In the civil law. A coming between parties. The act by which a person, not originally a party to a suit or proceeding, but claiming an interest in the subject matter in dispute, interposes his claim, or *comes in between* the parties, and thus makes himself a third party to the proceeding. See 2 *Chitt. Gen. Pr.* 492. Intervention is unknown in the English courts of law and equity, but is admitted in the practice of the ecclesiastical courts. *Id. ibid.*

**INTESTABILIS.** Lat. [from *in*, priv. and *testari*, to testify.] In the civil law. That cannot testify; one whose testimony cannot be received; an incompetent or disqualified witness. *Calv. Lex.*

**INTESTABLE.** [Lat. *intestabilis*.] Incompetent to make a will. 2 *Steph. Com.* 234. But *intestabilis* (q. v.) properly had another signification.

**INTESTACY.** The state of an intestate; the condition of a party who dies without

having made a will. 2 *Kent's Com.* 408. See *Intestate*.

**INTESTATE.** [Lat. *intestato, intestatus*, qq. v.] Without a will; a person who dies without making a will; or without making a valid will. 2 *Bl. Com.* 494. 2 *Kent's Com.* 408, 409. The opposite of *testator*, (q. v.) One who makes a will and appoints executors, who refuse to act, is said in the books to die *quasi intestate*. 2 *Inst.* 397. *Cowell. Lovelass on Wills*, 1. This is borrowed from the civil law. See *Intestatus*.

**INTESTATO.** Lat. In the civil law. Intestate; without a will. *Dig.* 50. 17. 7. *Calv. Lex.*

**INTESTATUS.** Lat. [from *in*, priv. and *testare*, to make a will.] In the civil and old English law. An intestate; one who dies without a will. *Dig.* 50. 17. 7. *Fleta*, lib. 2, c. 57, § 10. *Intestatus decessit, qui aut omnino testamentum non fecit, aut non jure fecit, aut id quod fecerat ruptum irritumve factum est, aut nemo ex eo hæres extitit*; a man dies intestate who either has not made any will at all, or has not made it in due form of law; or if the will which he has made is cancelled or broken; or if no one will become heir under it. *Inst.* 3. 1, pr. *Dig.* 38. 16. 1. *Id.* 50. 16. 64. See *Ab intestato*.

**INTIMATION.** In Scotch law. Notice; judicial notice of any proceeding.

Notice of an assignation (assignment) given to a debtor, made either by a notarial instrument, or by a private acknowledgment endorsed by the debtor on the assignation. *Bell's Dict. Kames' Equity*, b. 1, part 2, sect. 3.

**INTITLE.** An old form of *Entitle*. 6 *Mod.* 304.

**INTOL AND UTTOL.** In old records. Toll or custom paid for things imported and exported, or bought in and sold out. *Cowell.*

**INTRA.** Lat. Within. *Si quis sic dixerit, ut intra diem mortis ejus aliquid fiat; ipse quoque dies, quo quis mortuus est numeratur*; if one should use this expression, that something should be done within the day of his death, the day on which he died shall be included in the computation. *Dig.* 50. 16. 133. See *Infra*.

In; by; near. *Calv. Lex.*

**INTRA ANNI SPATIUM.** Lat. Within the space of a year. *Cod.* 5. 9. 2. *Intra annale tempus. Id.* 6. 30. 19.

**INTRA FIDEM.** Lat. Within belief; credible. *Calv. Lex.*

**INTRA LUCTUS TEMPUS.** Lat. Within the time of mourning. *Cod.* 9. 1, auth.

**INTRA MÆNIA.** Lat. Within the walls, (of a house.) A term applied to domestic, or *menial* servants. 1 *Bl. Com.* 425.

**INTRA PARIETES.** Lat. Between walls; among friends; out of court; without litigation. *Calv. Lex.*

**INTRA PRÆSIDIA.** Lat. Within the defences. *Dig.* 49. 15. 5. 1. See *Infra præsidia*.

**INTRA QUATUOR MARIA.** Lat. Within the four seas. *Shep. Touch.* 378.

**INTRARE.** L. Lat. In old English practice. To enter.

In old records. To take in land; to drain marshy land, and reduce it to herbage or pasture ground; to *inn* it. *Cowell.*

**INTRATIO.** L. Lat. [from *intrare*, to enter.] In old practice. An entry.

**INTRINSECUS,** *Intrinsecum.* Lat. [from *intra*, within.] That which is within; intrinsic; done or taken within. The opposite of *forinsecus*, (q. v.) Applied, in old English law, to that kind of service which was expressed in the charter and instrument, and remained to the chief lord. *Bract.* fol. 35 b.

**INTROMISSION.** [Lat. *intromissio*, from *intromittere*, q. v.] In Scotch law. The assuming possession of property belonging to another, either on legal grounds, or without any authority; intermeddling. The irregular intermeddling with the effects of a deceased person, which subjects the party to the whole debts of the deceased, is called *vitious intromission*. *Kames' Equity*, b. 3, c. 8, sect. 2.

**INTROMITTERE.** Lat. [from *intra*, within, and *mittere*, to send.] To introduce or let in. *Intromittere se*; to introduce or intrude one's self; to intermeddle with. *De causa testamentaria curia regis se non intromittit*; with a testamentary cause the king's court does not intermeddle. *Bract.* fol. 61.

**INTRUSION.** [Lat. *intrusio*, q. v.] In English law. The entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion. A species of injury by ouster or amotion of possession of the freehold, which happens where a tenant for term of life dies seized of certain lands and tenements,

and a stranger enters thereon after such death of the tenant, and before any entry of him in remainder or reversion. *Co. Litt.* 277. *F. N. B.* 203, 204. 3 *Bl. Com.* 169. 3 *Steph. Com.* 483. Such stranger is termed, in the technical sense of the word, an intruder. *Id. ibid.* See *Intrusio*.

**INTRUSIO.** Lat. [from *intrudere*, to intrude or thrust in.] Intrusion. *Intrusio est ubi quis (cui nullum jus competit in re, nec scintilla juris,) possessionem vacuum ingreditur, &c.*; Intrusion is where one who has no right nor spark of right in the thing, enters upon a vacant possession, as on an estate in abeyance (*hæreditatem jacentem*.) before entry by the heir, or by the chief lord, &c.; or if after the death of one who held for life, where the tenement ought to return to the owner, a person puts himself into seisin, before the tenement can come to him to whom it ought to come. *Bract.* fol. 160.

**INTUITUS.** Lat. [from *intueri*, to look upon or view.] A view; regard; contemplation. *Diverso intuitu*, (q. v.;) with a different view.

View or sight. *Intuitu Dei*; in the sight of God. *Mag. Chart.* pr.

**INURE.** More commonly written *enure*, (q. v.)

**INUTILIS.** Lat. [from *in*, priv. and *utilis*, useful, effectual.] Useless; without force or effect. *Inutilis stipulatio*; an ineffectual or void stipulation. *Inst.* 3. 20. 1, 5, 6. See *Utilis*.

*Inutilis labor, et sine fructu non est effectus legis.* Useless and fruitless labor is not the effect of law. *Co. Litt.* 127 b. The law forbids such recoveries whose ends are vain, chargeable and unprofitable. *Id. ibid.* *Wingate's Max.* 110, max. 38. See *Lex neminem cogit, &c.*

**INVADIARE, Invadiare.** L. Lat. [from *in*, and *vadiare*, to pledge.] In feudal and old European law. To pledge; to engage or pledge lands; to mortgage. *Habenda sibi et hæreditibus et cuicunque dare, vendere, invadiare, assignare, &c. voluerint*; to have to him and his heirs, and to whomsoever they may choose to give, sell, mortgage or assign, &c. *Kennett's Paroch. Ant.* 262. *Cowell. Spelman.* See *Vadiare*.

**INVADIATIO.** L. Lat. [from *invadiare*, q. v.] A pledge or mortgage. *Confirmamus eis omnes alias donationes, venditiones et invadiationes, eis rationabiliter factas*; we confirm to them all other gifts,

sales and mortgages, reasonably made to them. 1 *Mon. Angl.* 478. *Cowell. Blount.*

**INVADIATUS.** L. Lat. [from *invadiare*, q. v.] One who is under pledge; one who has had sureties or pledges given for him. *Spelman*, voc. *Invadiare*.

A person acquitted, (*absolutus*.) *Id. Ingulfus*, cited *ibid.*

**INVALID.** [Lat. *invalidus*, from *in*, priv. and *validus*, strong.] Not valid; without force or legal efficacy; void.

**INVECTA ET ILLATA.** Lat. In the civil law. Things carried in and brought in. Articles brought into a hired tenement by the hirer or tenant, and which became or were pledged to the lessor as security for the rent. *Dig.* 2. 14. 4, pr. *Id.* 20. 1. 32. *Id.* 20. 2. 2, et seq. The phrase is adopted in Scotch law. See *Bell's Dict.*

**INVENIENDO.** L. Lat. In old conveyancing. Finding. One of the words by which a rent might formerly be reserved. *Co. Litt.* 47 a.

**INVENIRE.** Lat. To find. *Inveniens*; finding. *Inventus*; found. *Inveniens libellum famosum et non corrumpens punitur*; he who finds a libel, and does not destroy it, is punished. *Moor*, 813. An old rule derived from the civil law.

**INVENTARIUM.** Lat. [from *invenire*, to find.] In the civil law. A formal enumeration and setting down in writing of the property found to belong to an inheritance; (*legitima bonorum in hæreditate repertorum annotatio et in scripturam reductio*.) *Calv. Lex. Cod.* 6. 30. 22. 1—4. *Dig.* 26. 7. 7, pr.

This word is retained in the Greek of the Novels, no equivalent Greek word being used. *Nov.* 1, c. 2, § 1.

**INVENT.** [Lat. *invenire*.] To find out. To contrive and produce something that did not exist before.

**INVENTIO.** L. Lat. [from *invenire*, to find.] In the civil law. Finding; one of the modes of acquiring title to property by occupancy. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 350. Sometimes Englished *invention*.

In old English law. A thing found; as goods, or treasure trove. *Cowell.* The plural *inventiones* is also used. *Id.*

**INVENTION.** [Lat. *inventio*, from *invenire*, to find out.] A finding out. The act or operation of finding out something new; the contrivance of something which did not before exist.\* *Webster.* See *Act*

of Congress, July 4, 1836. 2 *Kent's Com.* 366, *et seq.*

**INVENTORY.** [Lat. *inventarium*, *inventorium*.] A list of goods found, (*inventa*.) A list or schedule in writing, of the goods, chattels and credits [and sometimes of the real estate] of a testator or intestate, made by an executor or administrator.\* *Cowell*. 2 *Williams on Exec.* 834, 841. 2 *Kent's Com.* 414. A term derived from the *inventarium* (q. v.) of the civil law.

**INVENTUS.** Lat. [from *invenire*, q. v.] In old English law. Found. *Thesaurus inventus*; treasure trove. *Non est inventus*; [he] is not found.

**INVEST.** [L. Lat. *investire*, from *in*, and *vestire*, to clothe; Fr. *investir*.] To give possession; to put into possession; to put one in possession of a fee, estate, or office newly acquired. *Spelman*, voc. *Investire*. *Cowell*. To clothe with possession; to clothe possession with the solemnities of law. A term derived from the feudal law. See *Investiture*.

**INVEST.** [See *supra*.] To lay out money or capital in some permanent form so as to produce an income; to clothe it in something. Properly applied to capital not actively employed. *Thompson*, C. J. 15 *Johns. R.* 358, 384.

**INVESTITURE.** [L. Lat. *investitura*.] In feudal law. The delivery of actual corporeal possession of lands or tenements given or granted to another, with certain ceremonies or solemnities; which was held absolutely necessary to complete the donation.\* 2 *Bl. Com.* 311. *Id.* 53. The same with livery of seisin in the ancient English law. *Id. ibid.* *Feudum sine investitura nullo modo constitui potuit*; a fee could in no way be created without investiture. *Wright on Tenures*, 37.

*Investiture* is a metaphorical term, which, as Lord Mansfield observes, "the feudists took from clothing, [*vestimentum* ;] by which they meant to intimate that the naked possession was clothed with the solemnities of the feudal tenure." 1 *Burr.* 60. Bracton says of naked possession, (*nuda possessio*,) that it is so called because it is not protected by any clothing, (*eo quod non vallatur aliquo vestimento*.) *Bract.* fol. 159 b, 160.

**INVITO DOMINO.** Lat. Against the will of the owner. *Fleta*, lib. 1, c. 38, § 1.

**Invito beneficium non datur.** A benefit is not conferred on an unwilling party.

*Dig.* 50. 17. 69. No one is obliged to accept a benefit against his will.

**INVITUS.** Lat. Unwilling; against the will or inclination; without the consent; by or under coercion or compulsion. *In invitum*, (q. v.) against an unwilling or resisting party.

**INVOICE.** [from Fr. *envoyer*, to send.] A list or account of goods or merchandise sent or shipped by a merchant to his correspondent, factor or consignee, containing the particular marks of each description of goods, the value, charges and other particulars. *Jacobsen's Sea Laws*, 302.—A writing made on behalf of an importer, specifying the merchandise imported, and its true cost or value. *Andrews on Rev. Laws*, § 294.

**INWADIARE.** L. Lat. In old European law. To pledge. *LL. Longob.* lib. 1, tit. 14, l. 10. See *Inwadiare*.

**I. O. U.** I owe you. A simple form of acknowledging a debt in writing, in use among merchants, but more common in England than in the United States. "[Date.] I. O. U. 20l. A. B." It is regarded in law as a mere memorandum or evidence of debt, not amounting to a promissory note. *Chitty on Bills*, 526.

**IPSE.** Lat. He himself; he alone; the very man. *Ipsi, ipsæ*; they themselves.

*Ipsæ* [etenim] *leges cupiunt ut jure regantur*. [For] the laws themselves desire to be governed by right. A hexameter line quoted by Lord Coke from Cato, and repeatedly used as a maxim. 2 *Co.* 25 b, *The case of Bankrupts*. 3 *Co.* 32 b, *Butler and Baker's case*. 5 *Co.* 100 a, *Rooke's case*. 8 *Co.* 152 a, *Altham's case*. *Co. Litt.* 174 b.

**IPSISSIMIS VERBIS.** Lat. In the very same words; in the exact words. 7 *Howard's R.* 719. Applied to the statement of the language of a deceased witness. See 5 *Ohio St. R.* 325.

**IPSO FACTO.** L. Lat. By the act or fact itself; by the very act; by the mere effect of the act or fact, without any other act or proceeding. "Insanity does not work a dissolution of partnership, *ipso facto*." 3 *Kent's Com.* 58. "That is, it does not of itself work a dissolution, but is only a ground for proceedings to obtain a dissolution. *Id. ibid.* See 2 *Bl. Com.* 137. 3 *Id.* 19. *Cro. Eliz.* 679.

**IPSO JURE.** Lat. By the law itself; by the mere operation of law. *Bacon's Works*, iv. 330. *Calv. Lex*.

**IRA MOTUS.** Lat. Moved or excited by anger or passion. A term sometimes formerly used in the plea of *son assault demesne*. 1 *Tidd's Pr.* 645.

**IRE.** Lat. In old English law and practice. To go; to be dismissed from court, or discharged from legal restraint. *Ire ad largum*; to go at large. *Plowd.* 37. See *Eat inde sine die*, *Ibimus*.

**IRENARCHA.** Græco-Lat. [from Gr. *ειρηνη*, peace, and *αρχη*, government.] In the Roman law. An officer whose duties are described in *Dig.* 5. 4. 18. 7. See *Id.* 48. 3. 6. *Cod.* 10. 75. Literally, a peace officer or magistrate.

**IRREGULAR.** [L. Lat. *irregularis*, from *in*, priv. and *regula*, a rule.] Out of rule; not according to rule. See *Irregularity*.

**IRREGULARITAS.** L. Lat. In old English law. Irregularity. *Ne committat irregularitatem*; lest he be guilty of irregularity. *Bract.* fol. 407.

**IRREGULARITY.** [L. Lat. *irregularitas*, from *irregularis*.] In practice. Departure from rule (*regula*;) non-observance of rule.\* The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time, or improper manner. 1 *Tidd's Pr.* 512. Irregularity is the technical term for every defect in *practical proceedings*, or the mode of conducting an action or defence, as distinguishable from defects in *pleadings*. 3 *Chitt. Gen. Pr.* 509. It is a comprehensive term, including all formal objections to practical proceedings. *Id. ibid.*

**IRREIS, Irrys, Irrois.** L. Fr. Irish. *Kelham*.

**IRRELEVANT.** In the law of evidence. Not relevant; not relating or applicable to the matter in issue; not supporting the issue.

**IRREPLEGIABILIS.** L. Lat. [from *in*, priv. and *replegiabilis*, replevable, bailable.] In old English law. Not bailable. *Et sit hujusmodi incarcerationis irreplegiabilis*; and one so imprisoned shall not be bailable. *Stat. Westm.* 2, c. 11.

Irreplevable. See *Irreplevable*.

**IRREPLEVIABLE, Irreplevisable.** [L. Lat. *irreplegiabilis*.] That may not, or ought not by law to be repleved, delivered or set at large upon sureties. *Stat.* 13 *Edw.* I. c. 2. Applied originally to per-

sons as well as property, though in modern law exclusively to the latter.

**IRRER.** L. Fr. To journey; to perform an *iter* or *eyre*. *Kelham*.

**IRRESISTIBLE FORCE.** In the law of bailment. Such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable; such as the inroad of a hostile army, robbery by force, &c. *Story on Bailm.* §§ 25, 26. See *Vis major*.

**IRRETITUS.** L. Lat. In old European law. Summoned to court to do justice, or to answer an accusation, (*ad rectum vocatus*.) *Spelman*. Arrested or arretted; quasi *inrectatus*. *Id.* See *Arretted*.

**IRRIGATION.** [Lat. *irrigatio*, from *irrigare*, to water.] Watering; the act of watering land; the operation of causing water to flow over lands for agricultural purposes. See *Angell on Water-Courses*, § 120, *et seq.*

**IRRITANCY.** [from Lat. *irritum*, void.] In Scotch law. A becoming void or null; nullity. 1 *Kames' Equity*, 228, 230, 234. A clause in a conveyance declaring upon what contingencies an estate shall become void. *Id. ibid.*

**IRRITANT.** In Scotch law. Avoiding, or making void; as an irritant clause. See *Irritancy*.

**IRRITUS, Irritum.** Lat. [from *in*, priv. and *ratus*, valid; Fr. *irrite*.] In the civil law. Void; invalid; of no effect; ineffectual. Applied, in a particular sense, to a will where the testator, after making it in due form, suffered that change of condition called *capitis diminutio*, (*cum is qui fecit testamentum capite diminutus sit*), which rendered it of no effect; (*hoc casu irrita fieri testamenta dicuntur*.) *Inst.* 2. 17. 4, 5.

In a more general sense, it was applied to wills which were cancelled and to those which were void *ab initio*; (*et quæ rumpuntur irrita fiunt, et ea quæ statim ab initio non jure fiunt, irrita sint*.) *Id.* 2. 17. 5.

**IRROGARE.** Lat. [from *in*, upon, and *rogare*, to propose a law.] In the civil law. To impose or set upon, as a fine. *Calv. Lex*.

To inflict, as a punishment. *Id.*

To make or ordain, as a law. *Id.*

**IRROTULARE.** L. Lat. [quasi *inrotulare*; from *in*, in, and *rotulus*, a roll.] In old English law and practice. To enrol; to put on a roll or record. *Et eum hujus-*

*modi inquisitiones captæ fuerint, retornentur in bancis, et ibi fiat judicium, et irrotulentur*; and when such inquisitions shall be taken, they shall be returned in the benches, (the K. B. and C. B.) and there shall judgment be rendered, and they be enrolled. *Stat. Westm.* 2, c. 30. *Sicut per inspectionem irrotulamenti cartæ prædictæ, in rotulis cancellariæ nostræ irrotulatae, nobis constat*; as by inspection of the enrolment of the charter aforesaid in the rolls of our chancery enrolled, appears to us. *Reg. Orig.* 221.

**IRROTULAMENTUM.** L. Lat. [from *irrotulare*, to enrol.] In old English practice. Enrolment; an or the enrolment. *Reg. Orig.* 221.

**IRROTULATIO.** L. Lat. [from *irrotulare*, q. v.] In old English practice. An enrolment; an entry on record. *Forma irrotulationis talis esse debet*; the form of the enrolment ought to be thus. *Bract.* fol. 292. *Et sic tota irrotulanda erit narratio*; and so the whole declaration shall be enrolled. *Id. ibid.* *Et sic fiat irrotulatio*; and the enrolment shall be made thus. *Id.* fol. 299 b. *Acta sive irrotulationes*; proceedings or records. *Id.* fol. 1 b. *Fleta*, lib. 2, c. 65, § 11.

**ISHL.** [O. Sc. *ische*.] In Scotch law. The period of the termination of a tack or lease. *Bell's Dict.* 1 *Bligh's R.* 522. "At the *ische* of ye quhilk terme." 1 *Pitc. Cr. Trials*, part 2, p. 30.

**ΙΣΟΤΥΠΟΝ, ΙΣΟΓΡΑΦΟΝ.** Gr. In the civil law. A copy, (*exemplar*). *Nov.* 22, epil.

**ISSANT, Issantz.** L. Fr. [from *isser*, q. v.] Issuing. *Yearb.* T. 10 Edw. III. 11, 18.

**ISSER.** L. Fr. To go out or forth; to issue. *Ne pousse entrer ne isser a sa volonte*; may not go in, or go out at his pleasure. *Britt.* c. 42. *Issist*; [he] went out. *Id.* c. 80. *Istra*; shall go out, shall issue. *Kelham.* *Fet Assaver*, § 48.

**ISSINT.** L. Fr. So; thus. *Adonques dirra il issint*; then shall he say thus. *Britt.* c. 22. *Et issint poyes veier*; and so you may see. *Litt. sect.* 51, 52, 53, 62. *Et puis dirra le countour issint: que la peace est tiel, a vous conge, que William et Alice sa feme, &c.*; and afterwards the counter shall say thus: that the peace is such, with your leave, that William and Alice his wife, &c. *Stat. Mod. Lev. Fines.* This passage is sometimes differently pointed in the original, and quite differently translated. 2 *Inst.* 510.

**ISSUABLE.** In practice. Leading to, or producing an issue; relating to an issue or issues. See *infra*.

**ISSUABLE PLEA.** In practice. A plea in chief to the merits, upon which the plaintiff may take issue, and go to trial. 1 *Tidd's Pr.* 471. 1 *Burr. Pr.* 175. A demurrable plea is not issuable. 6 *Man. & Gr.* 752. Nor is a plea in abatement. 1 *Burr.* 59. 3 *Johns. R.* 259.

**ISSUABLE TERMS.** In English practice. Hilary and Trinity terms are so called, because in them issues are made up for the assizes, and after them, the judges usually go their circuits for the trial of such issues. 3 *Bl. Com.* 353. 1 *Tidd's Pr.* 106.

**ISSUABLY.** In practice. In an issuable manner. The defendant is sometimes put upon terms of pleading *issuably*. 1 *Tidd's Pr.* 471. See *Issuable plea*.

**ISSUE.** Fr. and Eng. [from Fr. *isser*, to go out; to proceed or arise from; L. Lat. *exitus*.] Offspring; including not only children, but all lineal descendants. See *infra*.

The point of fact or law growing out of, or resulting from the pleadings in an action. See *infra*.

"ISSUE," in a will, is a word of very extensive import, embracing descendants of every degree, whensoever existent. 2 *Jarman on Wills*, 328, (239, Perkins' ed.) In other words, it may be taken to include all generations of descendants however remote. 1 *Spence's Chancery*, 543. It has been called by Lord Hale, *nomen collectivum*, and by Lord Kenyon, *genus generalissimum*. 1 *Ventr.* 231. 4 *Term R.* 299. 3 *Id.* 373. In a deed, *issue* is taken universally as a word of purchase; in a will, it is taken as a word of limitation or of purchase as will best effectuate the devisors' intention, but if not controlled by the context, it is, it seems, a word of limitation. 1 *Spence's Chancery*, 543. See *Jarman on Wills*, chap. 40, where the subject is considered at length.

The word *issue*, in a will, is, however, sometimes understood in the restricted sense of "children." 2 *Jarman on Wills*, 36, (27, Perkins' ed.) And see 1 *White's Eq. Cases*, [27.] 4 *Kent's Com.* 418, 419. 15 *Mees. & W.* 263. 3 *A. K. Marshall's (Ky.) R.* [289,] 1140. 28 *Eng. Law & Eq. R.* 375. 35 *Id.* 564.

**ISSUE.** [L. Fr. *issue*, *issu*; L. Lat. *exitus*.] In pleading. A single, certain and material point *issuing out* of the allega-

tions or pleas [pleadings] of the plaintiff and defendant, [in an action at law,] consisting regularly of an affirmative [on one side] and a negative [on the other; and presenting for decision, in a brief and convenient form, the essence of the whole matter in controversy between the two parties.]\* *Co. Litt.* 126 a. The production of an issue is the object as well as the end and effect of the system or process of pleading; and when, by means of this process, the parties have arrived at a specific point affirmed on the one side and denied on the other, they are said to be *at issue*, (*ad exitum*, that is, *at the end* of their pleading;) and the emergent question itself is termed *the issue*; being designated, according to its nature, as an *issue in fact*, or an *issue in law*. *Steph. Plead.* 24, 54. 3 *Bl. Com.* 314. 3 *Steph. Com.* 572. See *Pleading*, *Tender of issue*, *Joinder in issue*.

ISSUE IN FACT, (or ISSUE OF FACT.) [L. Fr. *issue en fet.*] In pleading. An issue taken upon, or consisting of matter of fact; the fact only, and not the law, being disputed; and which is to be tried by a jury. 3 *Bl. Com.* 314, 315. *Co. Litt.* 126 a. 3 *Steph. Com.* 572. Matter of law, however, is sometimes involved in an issue in fact, as in what are called *general issues*.

ISSUE IN LAW. [L. Fr. *issu en ley.*] In pleading. An issue upon matter of law, or consisting of matter of law, being produced by a demurrer on the one side, and a joinder in demurrer on the other. 3 *Bl. Com.* 314. 3 *Steph. Com.* 572, 580. Called by Finch, "an issue upon the law," and "an issue of the law." *Law*, b. 1, c. 4, n. 83; b. 4, c. 40.

ISSUE ROLL. In English practice. A roll upon which the issue in actions at law was formerly required to be entered, the roll being entitled of the term in which the issue was joined. 2 *Tidd's Pr.* 733. It was not, however, the practice to enter the issue at full length, if triable by the country, until after the trial, but only to make an *incipitur* on the roll. *Id.* 734. These issue rolls have been abolished. *Pleading Rules*, Hil. T. 4 Will. IV.

ISSUE. L. Fr. Issue; an issue, (in pleading.) *Vous dites chose q' veot avoir deux issues, tenetz vous al une*; you say a thing that will have two issues, keep yourself to one. *Yearb.* T. 1 Edw. II. 14.

Egress. *Entre et issue.* *Britt.* c. 54.

ISSUES. [L. Lat. *exitus.*] The pro-

fits of lands or tenements. *Stat. Westm.* 2, c. 39. 3 *Bl. Com.* 280. Not used in the singular.

The profits growing from amercements or fines. *Termes de la Ley.* *Cowell.*

ITA. Lat. So. *Ita semper fiat relatio ut valeat dispositio.* The relation should always be so made that the disposition may prevail. 6 *Co.* 76.

ITA LEX SCRIPTA EST. Lat. So the law is written. *Dig.* 40. 9. 12. The law must be obeyed, notwithstanding the apparent rigor of its application. 3 *Bl. Com.* 430. See *Hoc perquam durum*, &c. We must be content with the law as it stands, without inquiring into its reasons. 1 *Bl. Com.* 32.

ITA QUOD. L. Lat. In old practice. So that. Formal words in writs. *Ita quod habeas corpus*; so that you have the body. 2 *Mod.* 180.

ITA QUOD. L. Lat. In old conveying. So that. An expression which, when used in a deed, formerly made an estate upon condition. *Litt.* sect. 329. Shepard enumerates it among the three words that are most proper to make an estate conditional. *Shep. Touch.* 121, 122. The term was also used in other instruments, and continues to be employed in modern law to denote a conditional provision. 2 *Ld. Raym.* 760, 766. Trimble, J. 1 *Peters' R.* 226, 227.

ITA TE DEUS ADJUVET. L. Lat. [L. Fr. *ci Dieu vous aide.*] So help you God. The old form of administering an oath in England, generally in connection with other words, thus: *Ita te Deus adjuvet, et sacrosancta Dei Evangelia*; So help you God, and God's holy Evangelists. *Ita te Deus adjuvet et omnes sancti*; So help you God and all the saints. Willes, C. J. *Willes*, 338.

ITEM. Lat. and L. Fr. Also. *Litt.* sect. 5, 6, 12, 26, 27, *et passim.* A word used in old instruments, and especially in wills, to denote the commencement of a new paragraph or section, containing a new provision or disposition in addition to the preceding one; the first or introductory one commencing with the word *imprimis*, (q. v.) Hence is derived the common word *item*, denoting a separate or distinct particular of an account or other thing.\* *Item* was an usual word in a will to introduce new distinct matter; and the rule is therefore laid down, that a clause thus introduced is not influenced by, nor to influence

a precedent or subsequent sentence, unless it be of itself imperfect and insensible without such reference. Trevor, C. J. 1 *Salk.* 239. The introduction of the word *item* shows that the testator is dealing with a new subject, and that the words following apply to that only, and not the preceding matter, unless the intention that they should do so is plain. Bayley, J. 4 *B. & C.* 669. See *Also*.

*Item* is also frequently used in old statutes to denote the commencement of a new division, as of a charter, or section. The second, fifth, and all the subsequent chapters of the Statute *Articuli cleri* begin with this word. In a charter of 31 Edw. I. cited by Molloy, all the paragraphs after the introductory one commence with *item*. *De Jur. Marit.* 370. Fleta uses the word repeatedly, in the sixtieth and sixty-first chapters of his second book. And see *Dyer*, 74.

ITEM is sometimes used as a verb. "The whole [costs] in this case that was thus *itemed* to counsel." *Bunb.* 164, case 233.

ITER. Lat. In the civil law. Way; a way or path; a species of servitude or easement incident to rural estates. *Iter est jus eundi, ambulandi hominis; non etiam jumentum agendi vel vehiculum*; way is a right for a man, of going or walking over another's land; but not of driving a beast or a vehicle. *Inst.* 2. 3, pr. It included, however, the right of passing on horseback, (*equus*), and of being carried in a sedan chair, or litter, (*sella aut lectica*.) *Dig.* 8. 3. 7, pr. *Id.* 8. 3. 12. 1 *Mac-keld. Civ. Law*, 343, § 313. A clear distinction was made between *iter*, *actus*, and *via*, which was adopted by Bracton, and followed by Lord Coke. *Inst.* 2. 3, pr. *Bract.* fol. 232. *Co. Litt.* 56 a. And see the opinion of Lord Brougham, 4 *Bell's Appeal Cases*, 390. See *Via*.

ITER. [L. Fr. *eyre*, Sc. *aire*.] In old English law. A journey; particularly the journey or circuit made or travelled by those justices who were anciently commissioned to go through the different counties in England, to hold certain pleas, or determine certain causes, and who were hence called *justices itinerant*, (*justitiarum itinerantes*.) *Bract.* fol. 108, 109. *Spelman.* 3 *Bl. Com.* 57. The *iter* was more commonly called, from the French, *eyre*, answering to the modern *circuit*, and the justices, justices in *eyre*. *Id. ibid.* See *Eyre, Justices in eyre*.

The court itself, held by these justices. *Qualiter se gerere debeant in itinere suo*; how they ought to conduct themselves on their eyres. *Bract.* fol. 109. *Poterit iter multipliciter impediri, revocari, vel suspendi*; the eyre may in various ways be prevented, countermanded or suspended. *Id.* fol. 110. A similar court, under the name of *justice aire*, was held in Scotland. *Skene de Verb. Sign.* voc. *Iter*.

ITER. Lat. [Fr. *route*.] In maritime law. A way or route. The route or direction of a voyage; the route or way that is taken to make the voyage assured, (*iter viagii*.) *Emerig. Tr. des. Ass.* chap. 13, sect. 5, § 1. Distinguished from the voyage itself. *Id. Distinguitur iter à viaggio.* *Casaregis*, disc. 67, n. 24.

ITERATO. Lat. In old practice. Again; a second time. *Bract.* fol. 74. *Fleta*, lib. 2, c. 65, § 12.

ITERUM. Lat. In the civil law. A second time. (Gr. *δέυτερον*.) *Dig.* 2. 13. 7. 1.

Again, (Gr. *πάλιν*.) *Id. ibid.*

Frequently, (*sæpius*.) *Id. ibid.*

ITINERA. Lat. (pl. of *iter*.) Eyres, or circuits. 1 *Reeves' Hist. Eng. Law*, 52.

ITINERANT. [L. Lat. *itinerans*.] Going or travelling about. See *Iter*.

ITINERANTES. L. Lat. Itinerant; travelling; in eyre. A term applied to justices instituted by Hen. II. Called, in the Black Book of the Exchequer, (c. 8,) *deambulantes et perlustrantes*.

ITINERARE. L. Lat. [from *iter*, q. v.] In old English law. To travel about; to go on the *iter*, *eyre*, or circuit. *Itineraverunt.* *Bract.* fol. 109, 109 b. *Ad itinerandum per comitatum talem, vel comitatus tales*; to travel through such a county or counties. *Id. ibid.*

ITINERATIO. L. Lat. In old English law. An eyre, or circuit; the same with *iter*, (q. v.) *Spelman.* *Si infra diem illum incipiat itineratio*; if the eyre begins within that day. *Bract.* fol. 110. *Quæ sit utilitas itinerationis*; what is the advantage of the eyre. *Id.* fol. 115 b.



J is sometimes used for I, in the initial letter of Institutiones, in references to the Institutes of Justinian.

JA. L. Fr. Yet; never; nevertheless. *Kelham.* *Britt.* c. 49, 93.

JACENS. Lat. [from *jacere*, q. v.]

Lying; fallen; prostrate; in abeyance. *Bract.* fol. 84. See *Hæreditas jacens*, *Jacere*.

**JACERE.** Lat. In civil and old English law. To lie. *Cum non jaceat in ore tenentis dedicere*; since it lies not in the mouth of the tenant to deny. *Stat. Westm.* 2, c. 9. *Fleta*, lib. 2, c. 50, § 1.

To lie, as an action, or proceeding in an action, to have place, (*locum habere*;) to be applicable or available; to be competent or legally proper. *Fleta*, lib. 4, c. 1, § 16. *Id.* lib. 6, c. 8, § 9. *Id.* c. 21, §§ 18—23.

To be fallen, or in a state of prostration; to be unclaimed; to be in abeyance. *Calv. Lex.* *Hæreditas dum jacet non adita*; an inheritance while it lies not entered upon. *Bract.* fol. 44.

To be overthrown or defeated in a suit. See *Jactivus*.

**JACET IN ORE.** L. Lat. In old English law. It lies in the mouth. *Fleta*, lib. 5, c. 5, § 49.

**JACTITATION.** [L. Lat. *jactitatio*, from *jactitare*, to throw or give out frequently.] A throwing or giving out; a boasting. See *infra*.

**JACTITATION OF MARRIAGE.** [L. Lat. *jactitatio matrimonii*.] In English ecclesiastical law. A boasting or giving out by a party that he or she is married to another, whereby a common reputation of their matrimony may ensue. This is one of the first and principal of what are termed matrimonial causes. 3 *Bl. Com.* 93.

**JACTIVUS, Jectivus.** L. Lat. In old European law. One who is in default, or loses by default. *Spelman.* *Cowell*.

**JACTURA.** Lat. [from *jacere*, to throw.] In the civil law. A throwing of goods overboard in a storm; jettison. *Loccenius, de Jur. Mar.* lib. 2, c. 7, § 1.

Loss from such a cause. *Calv. Lex.*

Loss, generally. *Id.*

**JACTUS.** Lat. [from *jacere*, to throw.] In the civil law. Jettison; the throwing of goods overboard, to lighten a vessel. *Loccenius, de Jur. Mar.* lib. 2, c. 7. *De lege Rhodia de jactu*; of the Rhodian law of jettison. *Dig.* 14. 2. *Lege Rhodiæ cavetur, ut si, levandæ navis gratiâ, jactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est*; by the Rhodian law, it is provided that if a jettison of goods is made for the purpose of lightening a vessel, that which is given [the loss which is borne] for all, must be

made good by the contribution of all. *Dig.* 14. 2. 1. *Abbott on Ship.* 475. See *Jettison*.

The thing thrown overboard, or cast away. *Grier, J.* 10 *Howard's R.* 303.

**JACTUS.** Lat. [from *jacere*, to throw.] In old practice. Thrown; cast; overthrown or defeated. See *Ject*.

**JADEMAINS, Jademeins, Jadumeins.** L. Fr. Yet; nevertheless. *Art. sup. Chart.* c. 10.

**JADES, Jaditz.** L. Fr. Late. *Dyer*, 97 b, (Fr. ed.)

**JAIL.** A form of *gaol*, sometimes used. See *Gaol*.

**JAIL DELIVERY.** See *Gaol delivery*.

**JALEMEINS, Jalemeyns, Ja le meyns, Jalemens.** L. Fr. Always; also; nevertheless; still; yet; sometimes; as well as; moreover; further. *Britt.* c. 20, 24. *Kelham*.

**JALO.** L. Lat. In old English law. A gallon. *Fleta*, lib. 2, c. 11.

**JALONATA.** L. Lat. In old English law. A gallon measure. *Fleta*, lib. 2, c. 12, § 1.

**JAMPNUM, Jaunum.** L. Lat. [from Fr. *jaulne*, yellow.] In old English law. Furze, heath, or gorse; a gorsy ground. *Cowell.* *Blount.* 1 *Leon.* 169.

A waterish place. *Co. Litt.* 5 a. *Cro. Car.* 179.

**JAMUNLINGUS.** L. Lat. [from Sax. *gemundian*, to protect, and *ling*, a young or tender person.] In old European law. One who delivered himself and his property into the protection of a more powerful person, as of a bishop or abbot, in order by that means to avoid military service and other burdens of the state. *Spelman*.

**JANITOR.** Lat. In old English law. A door-keeper. *Fleta*, lib. 2, c. 24.

**JASOIT.** L. Fr. Although. *Kelham*.

**JATARDE.** L. Fr. Lately. *Kelham*.

**JAVELOUR.** O. Sc. In Scotch law. Jailer or gaoler. 1 *Pitc. Cr. Trials*, part 1, p. 33.

**JECT, Jecte.** L. Fr. [L. Lat. *jactus*.] In old practice. Cast; thrown; overthrown or defeated in law. *Litt. sect.* 448, 680, 682, 684. A term derived from the old practice in trial by battel, and literally signifying thrown to the ground; unhorsed. *Le champion le tenant, al second cours, fuit jecte*; the champion of the tenant, at the second course or encounter, was thrown. *Yearb. M.* 4 Edw. III. 12.

**JECTS.** L. Fr. Cast; computed. *Dyer*, 55 b, (Fr. ed.)

**JEMAN.** In old records. Yeoman. *Cowell. Blount.*

**JEO.** Fr. I. *Jeo doy*; I ought. *Litt.* sect. 150. *Jeo teigne*; I hold. *Id.* *Jeo sue icy prist*; I am here ready. *Id.* *Jeo vous pry*; I pray you. *Id.* *Jeo garauntise*; I warrant. *Britt.* c. 75. In the *Fet Assaver*, the form is *joe*, throughout.

**JEO DONE.** L. Fr. I give. *Jeo done par si que tu me doynes*; I give for this that you may give me. *Britt.* c. 36. *Jeo face, par si que tu faces*; I do for this that you may do. *Id. ibid.* *Jeo face, par si que tu me doynes*; I do for this that you may give me. *Id. ibid.* *Jeo doyne, par si que tu me faces*; I give for this that you may do for me. *Id. ibid.* These are the proposed readings of Wingate, in his edition of Britton, A. D. 1640.

**JEOFAIL.** [from Fr. *j'ai faillé*, I have failed, or mistaken.] An oversight in pleading; a mistake, or error; strictly, the acknowledgment of an oversight. *Jeofaile*, or *j'ay faillé* was the expression anciently made use of by a pleader, when he perceived a slip in the form of his proceedings, and desired to amend it. Hence the statute (14 Edw. III. st. 1, c. 6,) which first gave the liberty of amendment in such cases was called the *Statute of Jeofail*; and the term has continued to be applied to the various statutes of amendment since passed. 3 *Bl. Com.* 407. *Crabb's Hist. Eng. Law*, 280, 281. 3 *Reeves' Hist.* 469, 472. *Steph. Pl.* 97, and Appendix, Note (32.)

**JEOPARDY.** Exposure to death, loss or injury; hazard, danger, peril. *Webster.* The constitution of the United States declares that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." Amendments, art. 5. 1 *Kent's Com.* 610, [12.] See *Once in jeopardy.*

**JESK ORE.** L. Fr. Until now. *Fet Assaver*, § 18.

**JET.** Fr. In French law. Jettison. *Ord. Mar.* liv. 3, tit. 8. *Emerig. Tr. des Ass.* ch. 12, sect. 40.

**JETSAM, Jotsom, Jetsen, Jetzon, Jotson.** [from Fr. *jetter*, to throw out.] Goods thrown into the sea from a vessel in danger of wreck, for the purpose of lightening her, and which remain under water, without coming to land.\* 5 *Co.* 106 b, *Constable's case.* 1 *Bl. Com.* 292. *Spelman con-*

siders this word as derived from the old Germ. *josum*, down, or downward; hence *jotsom* signifies that which sinks and stays at the bottom, (*id quod sidet et moratur in fundo*;) as distinguished from *flotsom*, or that which floats on the surface. See *Flotsam*. This is not to be confounded with *jettison*, (q. v.) although perhaps originally the same word.

**JETTISON, Jetson, Jettezoon.** [from Fr. *jetter*, to throw out; Lat. *jactus*; Fr. *jet*; Swed. *kast*.] In maritime law. The voluntary throwing overboard of goods, in a case of extreme peril, to lighten and save the ship.\* 3 *Kent's Com.* 232—235. 2 *Phillips on Ins.* 76. Sometimes called *semi-naufragium*, half shipwreck, or a species of shipwreck. 3 *Kent's Com.* 234.

**JEU.** L. Fr. A Jew. *Britt.* c. 97.

**JUESDAY.** L. Fr. Tuesday. *Kelham.*

**JEUSDYE, Jurisdie.** Tuesday. *Kelham.*

**JO, Joe.** L. Fr. I. *LL. Gul. Conq.* l. 38.

**JOCAL.** L. Lat. [Fr. *joyau*.] In old English law. A jewel, or gem. *Spelman.* *Jocalia*, (Fr. *joialx*;) jewels. *Id.* *Blount.* *De robis et jocalibus*; of robes and jewels. *Bract.* fol. 60 b. *Fleta*, lib. 2, c. 14, § 2.

**JOCARIUS.** L. Lat. A jester. *Cowell. Blount.*

**JOCLET.** In old English law. A little farm or manor. *Cowell. Blount.*

**JOCUS.** Lat. In old English law. A game of hazard. *Reg. Orig.* 290.

**JOCUS PARTITUS.** L. Lat. In old English practice. A divided game, risk, or hazard. An arrangement which the parties to a suit were anciently sometimes allowed to make by mutual agreement upon a certain hazard, (*sub periculo*;) as that one should lose if the case turned out in a certain way, and if it did not, that the other should gain, (*quod unus amittat si ita sit, et si non sit, quod alius lucretur*.) *Bract.* fol. 211 b, 379 b, 432, 434, 200 b. This arrangement, however, was altogether a voluntary and extra-judicial one, (*non judiciale*.) *Id.* 431 b. This expression is not noticed in the old dictionaries, and (from the common mode of printing *jocus*, *iocus*;) may, perhaps, have been confounded with *locus partitus*, (q. v.) In *Hengham's Summa Magna*, (c. 4,) it is written *bipertijocus*.

**JOEFNES, Joejene.** L. Fr. [from Lat. *juvenis*.] Young. *Britt.* c. 110.

**JOESDIE**, *Joefdy, Joendie, Joedy, Juedy*. L. Fr. Thursday. *Kelham*.

**JOIALX**. L. Fr. Jewels. *Artic. sup. Chart. c. 20*.

**JOINDER**. A joining or uniting together; a comprehending or including of several persons or things together; as of several persons as plaintiffs or defendants in one suit, or of several causes of action, or counts, in one declaration. 1 *Chitt. Pl.* 8, 41, 64, 84, 199. See *Misjoinder, Nonjoinder*.

**JOINDER IN DEMURRER**. In pleading. A pleading or formula, by which one of the parties to a suit *joins in*, or accepts an *issue* in law tendered by the opposite party. It follows immediately after a demurrer, and, with it, constitutes and completes the issue.\* *Steph. Plead.* 55, 239. See *Demurrer, Issue in law*.

**JOINDER IN ISSUE**. [L. Lat. *junctio exitus*.] In pleading. A formula by which one of the parties to a suit *joins in*, or accepts an *issue* in fact tendered by the opposite party. *Steph. Pl.* 57, 236. More commonly termed a *similiter*, (q. v.)

**JOINT**. [L. *junctus*.] United; combined; done by or against two or more unitedly; shared by, or between two or more.

**JOINT ACTION**. In practice. An action in which two or more unite, or are united as parties.

**JOINT BOND**. A bond executed by two or more as obligors, in which they bind themselves jointly but not severally, and which can be enforced only by a joint action against them all.

**JOINT AND SEVERAL BOND**. A bond in which the obligors bind themselves both jointly and severally to the obligee, and which may be enforced either by a joint action against all, or separate actions against each.

**JOINT FIAT**. In English law. A fiat in bankruptcy, issued against two or more trading partners. *Stat. 6 Geo. IV. c. 16. Wharton's Lex.* See *Fiat*.

**JOINT INDICTMENT**. In criminal law. An indictment in which several offenders are joined. 2 *Hale's P. C.* 173.

**JOINT STOCK COMPANY**. In mercantile law. A species of partnership consisting of a large number of members, constituting an unincorporated association; having a capital divided into shares transferable without the express consent of all the copartners, and acting under a written

instrument termed articles of association, or in England, a deed of settlement.\* 3 *Steph. Com.* 182. 3 *Kent's Com.* 26, 27. *Wordsworth on Joint Stock Companies*, 1—15. *Brande*.

**JOINT TENANTS**. [L. Lat. *conjunctim tenentes*.] Joint holders; persons who hold an estate or property jointly, or in that peculiar mode called joint tenancy.\* Persons who own lands by a joint title created expressly by one and the same deed or will. 4 *Kent's Com.* 357. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 2 *Bl. Com.* 180.

**JOINT TENANCY**. A joint holding; an union or conjunction of interest in land or other property. See *Estate in joint tenancy*.

**JOINTMENT**. L. Fr. Jointly. *Yearb. M.* 8 Edw. III. 20.

**JOINTRESS**, *Jointuress*. A woman having a jointure. 2 *Bl. Com.* 138. 2 *Crabb's Real Prop.* 191, § 1212.

**JOINTURE**. [L. Lat. *junctura*.] An estate settled upon a wife, to be enjoyed after her husband's decease, for her own life at least, in lieu and in satisfaction of dower.\*—A competent livelihood of freehold for the wife, of lands and tenements; to take effect presently in possession or profit, after the decease of the husband, for the life of the wife at least. *Co. Litt.* 36 b. 2 *Bl. Com.* 137. 1 *Steph. Com.* 255. 2 *Crabb's Real Prop.* 191, § 1212. A jointure strictly signifies a joint estate limited to both husband and wife, and such was its original form; but, in its more usual form, it is a sole estate limited to the wife only, expectant upon a life estate in the husband. 2 *Bl. Com.* 137. 1 *Steph. Com.* 255. 4 *Kent's Com.* 54. *Burton's Real Prop.* 119, pl. 357. And see *Atherley on Marriage Settlements*, 501—558.

**JONCARIA**, *Juncaria*. L. Lat. [from Fr. *jonc*, a rush.] In old English law. The soil where rushes grow. *Co. Litt.* 5 a. See *Juncaria*.

**JORER**. L. Fr. To swear. *Tauntost face jorer douze*; he shall presently cause twelve to swear. *Britt. c.* 30. A form of *jurer*, (q. v.)

**JORNALE**, *Jurnale*. L. Lat. [Fr. *journau*, from *jour*, a day.] In old European law. As much ground as might be ploughed in one day. *Spelman*.

**JOSUM**, *Jusum*. L. Lat. In old European law. Down; downward. *Pausant arma sua josum*; lay down their arms. *L. Alam.* tit. 45. Perhaps a corruption of *deorsum*.

**JOTSUM**. See *Jetsam*.

**JOUR**, *Jor*, *Jur*, *Joer*. L. Fr. [Lat. *dies*.] In old English law. Day; a day. *Co. Litt.* 134 b. See *Dies*, *Day*.

**JOUR EN BANC**. L. Fr. In old practice. A day in banc. *Yearb.* H. 11 Hen. VI. 1. 14 Hen. VI. 10. Distinguished from *jour en pays*, (a day in the country,) otherwise called *jour en nisi prius*. *Id. ibid.*

**JOUR IN COURT**. In old practice. Day in court; day to appear in court; appearance day. "Every process gives the defendant a day in court." *Hale's Anal.* sect. viii.

**JOURNAUNTE**, *Jornaunte*. L. Fr. Daybreak; dawn. *Britt.* c. 80.

**JOURNE**, *Journee*, *Jornee*. L. Fr. A day; a court, or court day; the day of holding a court. *A la journee*; at the court. *Stat. Westm.* 1, c. 33.

**JOURNES (JOURNEES or JOURNEIS) ACCOMPTS**. L. Fr. Journeys reckoned or computed. *Yearb.* M. 8 Edw. III. 20. *Dyer*, 55. See *Journeys accounts*.

**JOURNEYS ACCOUNTS**. [L. Fr. *journes accompts*, *journees accomptes*; L. Lat. *diætæ computatæ*.] Properly, journeys computed; days' journeys computed or reckoned. A term applied in practice to a fresh writ issued as soon as possible, or within a reasonable time after the abatement of a former one; the second writ being called a writ *by journeys accounts*. So termed from the old practice of *computing* the time allowed for the purpose, by *days' journeys*, which the party was obliged to make to the chancery, (a moveable court,) in order to purchase the writ. See *infra*.

\* \* The practice of allowing writs by *journeys accounts* was considered in Spencer's case, 6 Co. 9 b, 10, where it was traced to Bracton, fol. 176. It was again discussed at considerable length in *Kinsey v. Heyward*, 1 *Ld. Raym.* 433, 435, where Selden's explanation of the term was quoted by Treby, C. J. It has been recently considered in the English reports, and the phrase itself is sometimes used even in American law. 7 *Man. & Gr.* 763, 773, note. *Id.* 774, 784, note. 8 *Cranch's R.* 84—93.

The precise meaning of the phrase has generally not been clearly apprehended, owing to the uncouthness of its form, which is merely the L. Fr. *journées accomptes* Anglicized, without regard to the proper meaning of the words. The L. Lat. *diætæ computatæ* (days' journeys computed) sufficiently shows what the proper translation should be. The origin of the phrase is thus explained by Selden, as quoted by Treby, C. J. *ubi supra*. The chancery being anciently a moveable court, and following the king's court, and the writs being to be purchased out of the said court, the party who purchased the second writ was bound to apply to the king's court as hastily (that he might obtain the second writ) as the distance of the place would allow, *accounting* twenty miles for every *day's journey*; and, for this reason, he was to show in the second writ, that he had purchased his second writ as hastily as he could, *accounting the days' journeys* he had to the king's court. Hence the second writ was said to be brought *per diætæ computatas*, (by days' journeys accounted,) or, in French, *par journées accomptes*. See *Selden's Diss. ad Fletam*, c. 8, sect. 1.

**JUBERE**. Lat. In the civil law. To order, direct or command. *Calv. Lex.* The word *jubeo*, (I order,) in a will, was called a word of direction, as distinguished from *precatory* words. *Cod.* 6. 43. 2.

To assure or promise. *Calv. Lex.* See *Fide-jubere*.

To decree or pass a law. *Id.* *Adam's Rom. Ant.* 97.

**JUCHUS**, *Jochus*. L. Lat. [Germ. *jock*; Fr. *joug*; Lat. *jugum*.] In old European law. A yoke of land; a portion of land which might be ploughed by a yoke of oxen in one day. *Spelman*.

**JUDÆUS**, *Judeus*. Lat. A Jew. *Judeus nihil proprium habere potest, quia quicquid acquirit non sibi acquirit sed regi, quia non vivunt sibi ipsis sed aliis, et sic aliis acquirunt et non sibi ipsis*; a Jew can have nothing of his own, because whatever he acquires he acquires not for himself but for the king; for they do not live for themselves but for others, and so they acquire for others and not for themselves. *Bract.* fol. 386 b. *Do tibi talem rem, habendum tibi et hæredibus tuis, vel cuicunque dare vel assignare volueris, exceptis viris religiosis et Judeis*; I give you such a thing, to have to you and your heirs, or to whomsoever you choose to give or

assign it, except religious men and Jews. *Id.* fol. 47 b. This last clause or exception was very common in ancient deeds. *Co. Litt.* 223 b.

**JUDAISMUS.** Lat. [from *Judæus*, q. v.] In old English law. Judaism; the religion or rites of the Jews. *Cowell. Blount.*

The income anciently accruing in England to the king, from the Jews. *Judaismum nostrum Angliæ. Blount.*

The place or street where the Jews lived, called Jewry. *Vetus Judaismus*; old Jewry, in London. *Blount.*

Usury; or Jewish interest. This was the subject of the statute 18 Edw. I. called *Statutum de Judaismo.* 2 *Inst.* 506.

A mortgage. *Ad acquietandam terram prædictam de judaismo in quo fuit impignorata*; to clear the said land of a mortgage [or judaism] in which it was pledged, &c. *Magn. Rot. Pip.* 9 Edw. II. *Cowell. Secundum legem et consuetudinem Judaismi*; according to the law and custom of Judaism. *Mem. in Scacc.* P. 6 Edw. I.

**JUDEX.** Lat. In old English law. A judge; one who declares the law, (*qui jus dicit*), or administers justice between contending parties.\* *Bract.* fol. 106 a. 3 *Bl. Com.* 25. A title generally given to ecclesiastical judges, as distinguished from the *justitarius* of the common law courts. *Bract.* fol. 401, 402, 405, 406.

*Judex æquitatem semper spectare debet.* A judge ought always to regard equity. *Jenk. Cent.* 45, case 85.

*Judex bonus nihil ex arbitrio suo faciat, nec proposito domesticæ voluntatis, sed juxta leges et jura pronunciet.* A good judge should do nothing of his own arbitrary will, nor on the dictate of his personal inclination, but should decide according to law and justice. 7 *Co.* 27 a, *Calvin's case.*

*Judex est lex loquens.* A judge is the law speaking; [the mouth of the law.] 7 *Co.* 4 a, *Calvin's case.*

*Judex non potest esse testis in propria causa.* A judge cannot be a witness in his own cause. 4 *Inst.* 279.

*Judex non potest injuriam sibi datam punire.* A judge cannot punish a wrong done to himself. See 12 *Co.* 114.

*Judex non reddit plus quam quod petens ipse requirit.* A judge does not give more than what the complaining party himself demands. 2 *Inst.* 286. Said of the re-

covery of damages in real actions. *Id. ibid.*

*Judici officium suum excedenti non paretur.* A judge exceeding his office is not to be obeyed. *Jenk. Cent.* 139, case 84. Said of void judgments. *Id. ibid.*

*Judici satis pœna est, quod Deum habet ultorem.* It is punishment enough for a judge that he has God as his avenger. 1 *Leon.* 295.

*Judicis [nostrum] est judicare secundum allegata et probata.* It is the duty of a judge to determine according to what is alleged and proved. *Dyer*, 12 a.

*Judicis est jus dicere, non dare.* It is the province of a judge to declare the law, not to give it. *Lofft*, Appendix, 42.

*Judicis officium est ut res, ita tempora rerum quærere.* It is the duty of a judge to inquire into the times of things, as well as into things themselves. *Co. Litt.* 171. Part of a Latin couplet quoted by Lord Coke. *Id. ibid.*

**JUDEX.** Lat. In old English law. A juror. *LL. Hen.* I. c. 6. *Spelman.*

**JUDEX.** Lat. In the old civil law. A private person appointed by the prætor, with the consent of the parties, to try and decide a cause or action commenced before him; otherwise called *judex datus*, and *judex pedaneus*, (qq. v.) He was appointed on the application of the plaintiff, (*actor*), as soon as the cause was at issue, and received from the prætor a written formula instructing him as to the legal principles according to which the action was to be judged. *Calv. Lex.* 1 *Mackeld. Civ. Law*, 187, § 193, Kaufmann's note. Hence he was said to have the *judicium*, as the prætor had the *jus*; and the proceedings before him were said to be *in judicio*, as those before the prætor were said to be *in jure.* *Id. ibid.*

\* \* The word *judex* is generally used in the Digests, in this its original sense. It is sometimes translated *judge*, but not, as it seems, with entire accuracy. The precise function, indeed, of the *judex* has been differently represented by the civilians; some supposing that he merely found the facts of the case as they appeared in evidence, and reported them with his opinion to the prætor; others, that he determined the law as well as the fact, and pronounced *judgment* in the proper modern sense of the word. 1 *Spence's Chancery*, 210, and note. Some features of the office resemble those of the modern *juror*, particularly the

fundamental one that the *judez*, like the *juror*, was a *private person, regularly called in at a certain stage of a cause*, to aid in its trial and determination. The circumstance, however, that private causes were generally referred to a *single judez*, to whom their *exclusive management* while before him was committed, constitutes a very marked and material point of distinction between the two offices. What the discretion of a *judez* was, how he contrived to provide himself, *pro hac vice*, with a sufficient amount of law knowledge to enable him to get through a cause, and upon what singular grounds he was often inclined to place his decision, may be seen in the very unreserved account given by the grammarian and critic Aulus Gellius, of his own experience in the office. *Noctes Atticæ*, lib. 14, c. 2.

**JUDEX.** Lat. In later and modern civil law. A judge, in the modern sense of the term; a public officer before whom actions are brought and pleadings carried on, as well as issues tried and determined, in courts held for the purpose; and who, unlike the ancient *judez*, has entire control of the action from its commencement to its termination. After the system of trial by *judices* (*supra*) had been abandoned in Roman practice, the function and powers of the *judez* were transferred to, and united with those of the prætor or magistrate, and in this sense the term *judez*, as employed in the Institutes, Code and Novels, is to be understood. *Hallifax, Anal.* b. 3, c. 8, num. 15. See *Cod.* l. 45, 48, 49, 51. *Id.* 7. 43—49. *Nov.* 82.

**JUDEX A QUO.** Lat. In modern civil law. The judge from whom, as *judez ad quem* is the judge to whom an appeal is made or taken. *Hallifax, Anal.* b. 3, c. 11, num. 34.

**JUDEX DATUS.** Lat. In old Roman law. A judge given, that is, assigned or appointed by the prætor to try a cause. See *Judez* in old civil law.

**JUDEX DELEGATUS.** Lat. In the civil law. A delegated judge. *A judice judez delegatus judicis dandi potestatem non habet, quum ipse judiciario munere fungatur, nisi à principe judez datus fuerit*; a judge delegated by a judge has not the power of assigning a judge, as he should exercise the judicial office personally, unless the judge should have been assigned by the emperor. *Cod.* 3. 1. 5.

**JUDEX FISCALIS.** L. Lat. In old

European law. A fiscal judge; a judge having cognizance of matters pertaining to the *fiscus*, or public treasury, and by whose sentence property was confiscated. *Spelman, voc. Grafio.* Supposed to be the same with the *grafio* and *comes*, (qq. v.) *Id.* *L. Ripuar.* tit. 35. *Espit des Loix*, liv. 30, c. 18.

**JUDEX ORDINARIUS.** Lat. In the civil law. An ordinary judge; one who had the right of hearing and determining causes as a matter of his own proper jurisdiction, (*ex propria jurisdictione*;) one who exercised jurisdiction in his own right, and not by virtue of a derived or delegated authority. *Calv. Lex.* *Id.* voc. *Ordinarii judices.* This term is understood by Blackstone in a different sense. See *Judices ordinarii*.

**JUDEX PEDANEUS.** Lat. In the Roman law. A name given to the *judez* appointed by the prætor to try a cause, from the low seat which he occupied at the foot of the tribunal or prætor's bench, (*ad pedes tribunalis.*) *Calv. Lex. vocc. Judez pedaneus, Pedanei judices.* Other derivations are given *ibid.* See *Judices pedanei*.

**JUDGE.** [Fr. *juge*; Lat. *judez*, q. v.] A person whose office is to administer justice (*jus dicere*) in courts held for that purpose; a public officer authorized by law to hear and determine causes, and who holds courts statedly for that purpose.

One who presides in a court of judicature, either solely or with associate judges.

**JUDGE ADVOCATE.** In military law. An officer of a court-martial, who combines the character of adviser to the court with that of public prosecutor.\* 1 *McArthur on Courts Martial*, 233, (ed. 1806.) *Tytler's Mil. Law*, c. 10. *O'Brien's Mil. Law*, 281, 283.

**JUDGMENT.** [Fr. *jugement*; Lat. *judicium.*] In practice. The sentence of the law, pronounced by a court upon the matter contained in the record [of an action before it.] 3 *Bl. Com.* 395, 396. The final proceeding in an action at law, by which the court applies the law to the particular case presented before it, and specifically grants or denies to the plaintiff the remedy which he has sought by the action.\* *Id. ibid.* An award of execution on the record, is not a judgment, properly so called, that is, it is not a judgment to recover. 11 *East*, 516.

Judicial determination or decision; adjudication. See *Judicium*.

In a more general sense,—the act, process or business of judging, that is, of *hearing* as well as determining a cause. This was one of the senses of the Lat. *judicium*, (q. v.)

**JUDGMENT PAPER.** In English practice. A sheet of paper containing an *incipitur* of the pleadings in an action at law, upon which final judgment is signed by the master. 2 *Tidd's Pr.* 930.

**JUDGMENT RECORD.** In practice. A record of the proceedings in an action at law, from the commencement of the pleadings to the giving of judgment inclusive, composed of what are technically called *entries*, made according to a prescribed order, and drawn in strict conformity with established precedents. See *Record*. This record, when properly signed, filed and docketed, constitutes the legal evidence of the judgment, and entitles the party obtaining it to issue execution. It is sometimes called a *judgment roll*, (q. v.)

**JUDGMENT ROLL.** In English practice. A roll of parchment containing the entries of the proceedings in an action at law to the entry of judgment inclusive, and which is filed in the treasury of the court. 1 *Arch. Pr.* 227, 228. 2 *Tidd's Pr.* 931. See *Roll*.

**JUDICARE.** Lat. [from *judeo*, a judge.] In civil and old English law. To judge; to decide or determine judicially; to give judgment or sentence.

**Judicandum est legibus non exemplis.** Judgment is to be given according to the laws, not according to examples or precedents. 4 *Co.* 33 b, *Mitton's case*. 4 *Bl. Com.* 405.

**JUDICARE.** L. Lat. In feudal law. To give by will. *Feud. Lib.* 2, tit. 9, § 3. *Calv. Lex*.

**JUDICATIO.** Lat. [from *judicare*, q. v.] In the civil law. Judging; the pronouncing of sentence, after hearing a cause. *Hallifax, Anal.* b. 3, c. 8, num. 7.

**JUDICATUS, Judicata, Judicatum.** Lat. [from *judicare*, q. v.] In civil and old English law. Adjudged; determined; decided. *Res judicata*; a thing adjudged or determined; a judicial sentence or determination. See *Res judicata*. *Judicatum solvere*; to pay what was adjudged to a party in a suit. 3 *Bl. Com.* 291. In the civil law, security (*satisfactio*) *judicatum solvi*, was security that the judgment of the court should be complied with. *Inst.* 4. 11. See *Dig.* 46. 7.

**JUDICES.** Lat. [pl. of *judeo*, q. v.]

Judges. *Judices non tenentur exprimere causam sententiae suae*; judges are not bound to express the reason of their sentence or judgment. *Jenk. Cent.* 75, case 43. An old rule relating to the form of the judgment as entered on record.

**JUDICES ORDINARI.** Lat. In the civil law. Ordinary *judices*; the common *judices* appointed to try causes, and who, according to Blackstone, determined only questions of fact. 3 *Bl. Com.* 315.

**JUDICES PEDANEI.** Lat. In the Roman law. The ordinary *judices* appointed by the praetor or by the governors of provinces to try causes. See *Cod.* 3. 3. So called from *pes*, foot, denoting the low seat they occupied, or, according to some, the humble character of their office; (Gr. *χαμαιδικασται*.) *Calv. Lex.* See *Cod.* 7. 51. 5. 2. They are defined in the Code, as those *qui negotia humiliora disceptant*, (who should have charge of the more humble matters.) *Cod.* 3. 3. 5. In the Novels they are required to sit continually at the royal porch, in the little houses where they now judge, (*ἐν οἷς καὶ νῦν οἰκιστοὶς δικάζουσιν*), and to hear causes from early in the morning to sunset. *Nov.* 82, c. 3.

**JUDICES SELECTI.** Lat. In the civil law. Select or selected *judices* or judges; those which were used in criminal causes, and between whom and modern *jurors* many points of resemblance have been noticed. 3 *Bl. Com.* 366.

**JUDICIA.** Lat. In the Roman law. Judicial proceedings; trials. *Judicia publica*; criminal trials. *Dig.* 48. 1.

**JUDICIA.** L. Lat. [pl. of *judicium*, q. v.] In old English law. Judgments. *Judicia sunt tanquam juris dicta, et pro veritate accipiuntur.* Judgments are, as it were, the sayings of the law, and are received as truth. 2 *Inst.* 537.

**Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam.** Judgments frequently become matured by deliberations; never by hurried process or precipitation. 3 *Inst.* 210.

**Judicia posteriora sunt in lege fortiora.** The later judgments are the stronger in law. 8 *Co.* 97 a, *Manning's case*. *Judiciis posterioribus fides est adhibenda.* Faith or credit is to be given to the later judgments. 13 *Co.* 14, *The case of Modus Decimandi*.

**JUDICIAL.** [Lat. *judicialis*, from *judeo*, a judge, or *judicium*, judgment.] Belonging to the office of a judge; as *judicial authority*.

Relating to, or connected with the administration of justice; as a *judicial* officer.

Having the character of judgment or formal legal procedure; as a *judicial* act.

Proceeding from a court of justice; as a *judicial* writ, a *judicial* determination.

Constituting the basis of a judgment; as a *judicial* opinion.

**JUDICIAL CONFESSION.** In the law of evidence. A confession of guilt, made by a prisoner before a magistrate, or in court, in the due course of legal proceedings. 1 *Greenl. Evid.* § 216.

**JUDICIAL SALE.** In practice. A sale under the judgment or decree of a court; a sale under judicial authority, by an officer legally authorized for the purpose, such as a sheriff's sale, an administrator's sale, &c.

**JUDICIAL WRIT.** In English practice. A writ issuing under the private seal of a court, and tested in the name of the chief or senior justice; as distinguished from an *original* writ which issues out of Chancery under the *great seal*, and is tested in the king's name. 3 *Bl. Com.* 282. See *Fleta*, lib. 2, c. 13, § 3.

**JUDICIUM.** Lat. [pl. *judicia*; from *judex*, q. v.] In the civil law. The investigation and decision of a cause by a *judex*, constituting the second of the two stages or divisions of the proceedings in an action; a trial. See *Judex, Actio*.

A judicial procedure; a proceeding before a *judex*, or judge. *Inst.* 4. 5. 8.

An action. *Bonæ fidei judicium*; an action of good faith. *Id.* 4. 6. 29. 30. *Id.* 4. 6. 20. See *Dig.* 5. 1. 13. *Cod.* 3. 1.

A court, or judicial tribunal. *Quod in judicio permaneat usque ad terminum litis*; that he will remain in court until the end of the suit. *Inst.* 4. 11. 2. *Præsens in judicio*; present in court. *Id.* 4. 11. 3. *In judicium venire*; to come into court. *Sive in judicio, sive extra judicium*; whether in court or out of court. *Id.* 4. 11. 4.

The intention of a testator. *Id.* 2. 11. 1.

**JUDICIUM.** L. Lat. In old English law. A court, or judicial tribunal. *Partibus in judicio comparentibus*; the parties appearing in court. *Bract.* fol. 183 b. *Id.* fol. 296 b. *Præsentes in judicio*; being present in court. *Id.* fol. 257 b, 281 b, 288 a. *Postquam diem in judicio recepit*; after he had a day in court. *Id.* fol. 344 a. *Si nullum sit ibi placitum nec judicium*; if there be there no plea nor court. *Id.*

*ibid.* *Cujus judicium et forum actor adire debeat*; whose court and forum the plaintiff ought to apply to. *Id.* fol. 401.

A proceeding in court; judicial hearing and investigation. *Judicium est in qualibet actione trinus actus trium personarum; judicis, viz. actoris, et rei*:—s. *quod duæ sint personæ ad minus inter quas vertatur contentio, et tertia persona, ad minus, qui judicet*; judicial procedure in an action is the threefold act of three persons, namely, the judge, the plaintiff, and the defendant; so that there be two persons at least between whom the controversy is carried on, and a third person at least who shall judge. *Bract.* fol. 106 a. *Id.* fol. 360 b, 431 a. See *Fleta*, lib. 1, c. 17, § 1.

Judicial authority. *Imprimis videat tenens an sit ibi judicium*; the tenant should first consider whether there be there a competent judicial tribunal. *Bract.* fol. 376 a. *Id.* fol. 405 b.

Due process of law. *Sine judicio*; without process of law; as when one ejected another by force without resorting to law. *Bract.* fol. 205 a.

An action. *Judicium novæ disseysinæ*; an action of novel disseisin. *Id.* fol. 161 b.

Trial by jury; (*duodecemvirale judicium*, q. v.)

The verdict of a jury. *Justum judicium juratorum*; the just verdict of the jurors. *Bract.* fol. 289 a. *Potest jurator falsum facere judicium*; a juror may give a false verdict. *Id. ibid.* *Per legale judicium parium suorum*; by the lawful judgment of his peers. *Mag. Chart.* c. 29. 2 *Inst.* 48.

Judgment. *Judicium executioni demandare*; to enforce a judgment by execution. *Bract.* fol. 107 a, 175 a. *Cum perfectum sit judicium licet non executum*; since the judgment is perfected though not executed. *Id.* fol. 311 b. *Judicium pro querente*; judgment for the plaintiff. 1 *Stra.* 33, 34. *Judicium est quasi juris dictum*; judgment is, as it were, the speech of the law; the very voice of law and right. *Co. Litt.* 39 a, 168 a. 10 *Co.* 42 a.

**Judicium a non suo judice datum nullius est momenti.** A judgment given by one who is not a proper judge, (or, not judge of the cause,) is of no weight. 10 *Co.* 76 b. Expressed in other words by Bracton: **Sententia a non suo judice lata non teneat**; a sentence pronounced by one who is not a proper judge is not binding. *Bract.* fol. 401 a.

**Judicium non debet esse illusorium; suum effectum habere debet.** A judgment ought not to be illusory; it ought to have its proper effect. 2 *Inst.* 341.

**Judicium redditur in invitum in præsumptione legis.** Judgment in presumption of law is given against an unwilling party. *Co. Litt.* 248 b, 314 b. **Judicium ruit in invitum.** *Bract.* fol. 41 b. 2 *Stra.* 1043, arg. See *In invitum*.

**Judicium (semper) pro veritate accipitur.** A judgment is always taken for truth; that is, as long as it stands in force it cannot be contradicted. 2 *Inst.* 380. *Co. Litt.* 39 a, 168 a.

**JUDICIUM CAPITALE.** L. Lat. In old English law. Judgment of death; capital judgment. *Fleta*, lib. 1, c. 39, § 2. Called also *judicium vitæ amissionis*; judgment of loss of life. *Id.* lib. 2, c. 1, § 5.

**JUDICIUM DEI.** Lat. In old English and European law. The judgment of God; otherwise called *Divinum judicium*; the divine judgment. A term particularly applied to the ordeals by fire or hot iron, and water, and also to the trials by the cross, the eucharist, and the corsned, and the *duellum* or trial by battel, (qq. v.) it being supposed that the interposition of heaven was directly manifested in these cases, in behalf of the innocent. *Spelman.* *Si se super defendere non posset judicio Dei, sc. aquâ vel ferro, fieret de eo justitia*; if he cannot defend himself by the judgment of God, that is, by water or hot iron, let justice be done upon him. *LL. Edw. Conf.* c. 16. *Tenetur se purgare is qui accusatur, per Dei judicium, scilicet per calidum ferrum vel per aquam, pro diversitate conditionis hominum*; he who is accused is bound to purge himself by the judgment of God, that is, by hot iron or by water, according to the difference of the condition of persons. *Glanv.* lib. 14, c. 1.

**JUDICIUM PARIUM.** L. Lat. In old English law. Judgment of the peers, judgment of one's peers; trial by jury. *Mag. Chart.* 9 Hen. III. c. 29. *Id.* Johan. c. 39. See *Judicium, Per legale judicium parium suorum*.

**JUG.** In old English law. A watery place. *Domesday.* *Cowell.*

**JUGEMENT.** L. Fr. Judgment. *Britt.* c. 87, 100. *Jugement de brief*, (asked.) *Yearb. M.* 4 Edw. III. 58. *Jugement de count.* P. 8 Edw. III. 3.

**JUGERUM.** Lat. An acre. *Co. Litt.* 5 b. As much as a yoke (*jugum*) of oxen could plough in one day.

**JUGULATOR.** In old records. A cut-throat or murderer. *Cowell.*

**JUGUM.** Lat. In the civil law. A yoke; a measure of land; as much land as a yoke of oxen could plough in a day. *Nov.* 17, c. 8. Called, also, *jugalium* and *zygocephalum.* *Id.* *ibid.* See *Brissonius.*

**JUGUM TERRÆ.** L. Lat. In old English law. A yoke of land; half a plough land. *Domesday.* *Co. Litt.* 5 a. *Cowell.*

**JUICIO.** Span. [from Lat. *judicium*.] In Spanish law. A trial or suit. *White's New Recop.* b. 3, tit. 4, c. 1.

**JUISE.** L. Fr. A term used in Britton, to denote certain incidents to a franchise or privileged jurisdiction, particularly those of gallows, pillory and tumbrel. *Britt.* cc. 15, 19, 30.

**JUMENT.** Sc. In old Scotch law. An ox used for tillage. 1 *Pitc. Crim. Trials*, part 2, p. 89.

**JUMENTA.** Lat. In the civil law. Beasts of burden; animals used for carrying burdens. This word did not include oxen. *Dig.* 32. 65. 5.

**JUNCARIA, Joncaria.** L. Lat. [from Fr. *jonc*, a rush.] In old English law. The soil where rushes grow. *Co. Litt.* 5 a. *Cowell.*

**Juncta juvant.** United they aid. Lord Ellenborough, 11 *East*, 220. A portion of the maxim *Quæ non valeant singula, juncta juvant*, (q. v.) frequently cited. 3 *Man. & Gr.* 99.

**JUNCTURA.** Lat. [from *jungere*, to join.] In old English law. A joining together; the uniting, putting together, or including of several covenants in one stipulation or contract; (*si plura pacta de eadem re deducantur in stipulatione.*) *Bract.* fol. 100 b. One of the ancient *vestimenta pactorum*; (vestments of contracts.) *Id.* fol. 99 a. *Fleta*, lib. 2, c. 60, § 20.

A jointure; a joint estate. 4 *Co.* 2 a.

**JUNGERE DUELLUM.** L. Lat. In old English law. To join the *duellum*; to engage in the combat. *Fleta*, lib. 1, c. 21, § 10.

"JUNIOR" is no part of the name of the person to whose name it is usually affixed; but it is merely descriptive of the person intended. 10 *Paige's R.* 170. 14 *Barbour's R.* 261.

**JUNIORES.** L. Lat. In old European

law. Subordinate or inferior judges, (*judices subordinati*.) *Spelman*. See *Puisne*. Successors, or heirs. *Id*.

Vassals, (*vassalli*;) subjects, (*subditi*;) servants, (*famuli*.) *Id*. *L. Alam.* tit. 79, § 1.

Yeomen, (*ingenui*.) *Spelman*.

JURA. Lat. [pl. of *jus*, q. v.] Rights; laws. 1 *Bl. Com.* 123. See *Jus* and *infra*. Freedoms or abilities. *Bacon's Works*, iii. 265.

*Jura eodem modo destituuntur quo constituuntur*. Laws are abrogated by the same means [authority] by which they are made. *Broom's Max.* [681.]

*Jura naturæ sunt immutabilia*. The laws of nature are unchangeable. *Branch's Pr.*

*Jura publica anteferenda privatis*. Public rights are to be preferred to private. *Co. Litt.* 130 a. Applied to protections. *Id. ibid*.

*Jura publica ex privato [privatis] promiscue decidi non debent*. Public rights ought not to be decided promiscuously with private. *Co. Litt.* 130 a, 181 b.

*Jura sanguinis nullo jure civili dirimi possunt*. The rights of blood can be taken away by no civil law. *Dig.* 50. 17. 8. *Bacon's Max.* 52, reg. 11. Applied chiefly to cases of attainder.

JURA FISCALIA. Lat. In English law. Fiscal rights; rights of the exchequer. 3 *Bl. Com.* 45.

JURA IN RE. Lat. In the civil law. Rights in a thing; rights, which being separated from the *dominium*, or right of property, exist independently of it, and are enjoyed by some other person than him who has the *dominium*. 1 *Mackeld. Civ. Law*, 232, § 228. See *Jus in re*.

JURA MIXTI DOMINII. Lat. In old English law. Rights of mixed dominion. The king's right or power of jurisdiction was so termed. *Hale's Anal.* sect. vi.

JURA PERSONARUM. Lat. Rights of persons; the rights of persons. Rights which concern and are annexed to the persons of men. 1 *Bl. Com.* 122. *Hale's Anal.* sect. i.

JURA PRÆDIORUM. Lat. In the civil law. The rights of estates. *Dig.* 50. 16. 86.

JURA REGALIA. Lat. In English law. Royal rights, or privileges. 1 *Bl. Com.* 117, 119. 3 *Id.* 44.

JURA REGIA. Lat. In English law. Royal rights; the prerogatives of the crown. *Crabb's Hist.* 174.

JURA RERUM. Lat. Rights of things; the rights of things; rights which a man may acquire over external objects, or things unconnected with his person. 1 *Bl. Com.* 122. 2 *Id.* 1. *Hale's Anal.* sect. i.

JURA SUMMI IMPERII. Lat. Rights of supreme dominion; rights of sovereignty. *Hale's Anal.* sect. v. 1 *Bl. Com.* 49. 1 *Kent's Com.* 211. Called, also, by *Hale*, *jura majestatis*. *Anal.* sect. iv.

JURAMENTUM. L. Lat. [from *jurare*, to swear; Lat. *jusjurandum*.] In the civil and common law. An oath. *Juramentum est affirmatio vel negatio de aliquo, attestatione sacræ rei firmata*; an oath is an affirmation or denial respecting any matter, confirmed by the attestation of a sacred thing. *Fleta*, lib. 5, c. 22, § 1. *Juramentum est indivisibile, et non est admittendum in parte verum, et in parte falsum*; an oath is indivisible, and is not to be received as in part true and in part false. 4 *Inst.* 279. See *Oath*.

The classic word *jusjurandum* is used in the Digests. *Dig.* 12. 2. But *juramentum* occurs in the Code, and is the prevailing word in the later civil law, as in the feudal and old common law. *Cod.* 2. 59. *Feud. Lib.* 2, tit. 33.

JURAMENTUM CALUMNIÆ. L. Lat. In the civil and canon law. The oath of calumny. 4 *Reeves' Hist. Eng. Law*, 16. *Calv. Lex. Gilb. For. Rom.* 22. *Clerke's Prax. Cur. Adm.* tit. 42. Called, in the Code of Justinian, *sacramentum calumniæ*. *Cod.* 2. 59. 2. 3. See *Calumnia*.

JURARE. In the civil and feudal law. To swear. *Dig.* 12. 3. *Cod.* 5. 53. *Feud. Lib.* 2, tit. 2.

JURARE. Lat. In old English law. To swear; to make oath; to take an oath. *Bract.* fol. 340 b. *Jurare est Deum in testem vocare, et est actus divini cultûs*; to swear is to call God to witness, and is an act of religion. 3 *Inst.* 165. *Best on Evid.* 51, § 55. *Jurare duodecimâ manu*; to swear by twelve hands; that is, by eleven persons besides the party accused. See *Duodecima manus*.

JURAT. [Lat. *juratum*.] In practice. The memorandum or clause at the foot of an affidavit, showing when, [and in English practice, where,] and before whom it was sworn, (*juratum*.) 1 *Tidd's Pr.* 495. In the old forms, it ran thus: *Juratum* (or, by abbreviation, *Jurat*)—*die—coram J. H. Towns. Pl.* 491. This has been literally translated in the modern forms, "Sworn

this—day of—before me," &c.; and the original word *jurat'* adopted as the name of the clause. 3 *Chitt. Gen. Pr.* 339, 546. 6 *Ad. & Ell. (N. S.)* 528. 13 *Mees. & W.* 519.

The clause or certificate at the end of bills and answers in chancery, showing when, and how, and before whom they are sworn to, is also called the *jurat*. 1 *Barbour's Chanc. Pr.* 44, 144.

**JURATS.** [L. Lat. *jurati*.] Sworn men. Officers of certain municipal corporations in England, in the nature of aldermen, or assistants. *Cowell. Blount*. So called from their official oaths. See *Dugdale on Imbanking*, 18, *et seq.*

**JURATA.** L. Lat. [from *jurare*, to swear.] A jury. *Bract. fol.* 63 b. *Reg. Orig.* 179 b, 186, 188, 222. *Ad faciendam juratam illam*; to make that jury. *Fleta*, lib. 2, c. 65, § 12. So termed from being sworn well and truly to try the issue between the parties, and a true verdict to give according to the evidence. 3 *Bl. Com.* 365.

The *jurata*, or common jury of the ancient law, (otherwise termed *jurata patriæ*, a jury of the country,) as distinguished from the *assisa*, or assise established by Henry II. The jury seems to have been gradually introduced by usage, as an adaptation of the mode of trial by twelve men to other cases than those properly triable by the assise, and finally became, (even while assises were in use,) a familiar mode of trying any fact in dispute in a judicial proceeding. It differed from an assise, in being a tribunal chosen by consent of the parties themselves, or appointed by the court on their request; and in the jurors not being liable to an attain. In some cases, an assise was turned into a jury, (*vertitur in juratam*), and sometimes said to be taken in the manner, or form of a jury, (*in modum juratæ*). The difference between an *assisa* and a *jurata* was a very common piece of learning in the reign of Henry III. 1 *Reeves' Hist. Eng. Law*, 86, 335, 336. *Crabb's Hist.* 164. *Bract. fol.* 192 b, 210 b, 215 b. *Fleta*, lib. 4, c. 16. See *Assisa*, *Assise*.

**JURATA.** L. Lat. In English practice. The jury clause in a nisi prius record, so called from the emphatic words of the old forms: *Jurata ponitur in respectum*; the jury is put in respite. *Towns. Pl.* 487. *Yelv.* 97. *T. Raym.* 74.

**JURATOR.** L. Lat. [from *jurare*, to

swear.] In old English law. A juror. *Juratores*; jurors. 3 *Bl. Com.* 365. *Juratores assisæ*; jurors of the assise. *Reg. Orig.* 188, 223. *Juratores debent esse minus suspecti*; jurors ought to be free from suspicion. *Jenk. Cent.* 141, case 88. *Juratores sunt judices facti*. Jurors are the judges of fact. *Jenk. Cent.* 68, case 29.

A compurgator; one who swore for a defendant. *Fleta*, lib. 2, c. 63, § 11.

**JURATORY CAUTION.** [L. Lat. *cautio juratoria*.] In Scotch law. Security given by oath. See *Cautio*.

**JURE.** Lat. [abl. of *jus*, q. v.] By right; in right; by the law; according to the law. See *infra*.

**JURE BELLII.** Lat. By the right, or law of war. 1 *Kent's Com.* 126. 1 *Rob. Adm. R.* 289.

**JURE CIVILI.** Lat. By the civil law. *Inst.* 1. 3. 4. 1 *Bl. Com.* 423.

**JURE DIVINO.** L. Lat. By divine right. 1 *Bl. Com.* 191.

**JURE ECCLESIAE.** L. Lat. In right of the church. 1 *Bl. Com.* 401.

**JURE EMPHYTEUTICO.** Lat. By the right or law of emphyteusis. 3 *Bl. Com.* 232. See *Emphyteusis*.

**JURE GENTIUM.** Lat. By the law of nations. *Inst.* 1. 3. 4. 1 *Bl. Com.* 423. See *Jus gentium*.

**JURE NATURÆ.** Lat. By or according to the law of nature. *Jure naturæ æquum est neminem cum alterius detrimento et injuria fieri locupletiorum*. According to the law of nature, it is just that no man should be made richer by the loss and injury of another. *Dig.* 50. 17. 206.

**JURE PROPINQUITATIS.** L. Lat. By right of propinquity, or nearness. 2 *Crabb's Real Prop.* 1019, § 2398.

**JURE REPRESENTATIONIS.** L. Lat. By right of representation; in the right of another person. 2 *Bl. Com.* 224, 517. 2 *Crabb's Real Prop.* 1019, § 2398.

**JURE UXORIS.** L. Lat. In right of a wife. 3 *Bl. Com.* 210.

**JURE, Juree.** L. Fr. [from *jurere*, to swear.] A jury. *Serra la verite enquis par jure*; the truth shall be inquired by a jury. *Britt. c.* 51. *Serra la verite enquis par les jurours en forme de juree*; the truth shall be inquired by the jurors in the form of a jury. *Id. c.* 86. The chapters of Britton here referred to, are respectively entitled "*De assises tournes en jures*," and "*De assises tournes en jurees*," (of assises turned into juries.)

**JURER.** L. Fr. [from Lat. *jurare*.] To swear. *Britt.* c. 1. *Jurgent*; they shall swear. *Id.* c. 2.

**JURIDICAL.** [Lat. *juridicus*, q. v.] Relating to the administration of justice. A juridical day is one on which courts sit for the administration of justice. See *Juridicus*.

Belonging to the office of a judge. See *Judicial*.

**JURIDICUS.** Lat. [from *jus*, law, and *dicere*, to say, or pronounce.] Belonging to law; relating to the administration of justice in, or by a court. *Dies juridicus*; a day on which courts can lawfully sit; a juridical day; a law or court day.\* See *Dies juridicus*.

**Juris effectus in executione consistit.** The effect of the law consists in the execution. *Co. Litt.* 289 b.

**JURIS ET DE JURE.** Lat. Of law and from law. A term applied to absolute and conclusive presumptions, as distinguished from those which are inconclusive or rebuttable, which are termed *presumptiones juris* merely. *Best on Presumptions*, 20, § 17. *Best on Evid.* 43, § 48. *Burr. Circ. Evid.* 46. See *Præsumptio juris*, *Præsumptio juris et de jure*.

**JURIS ET SEISINÆ CONJUNCTIO.** L. Lat. In old English law. The union of the right [of possession or property in land] and the seisin, i. e. the actual corporal possession; constituting the complete title to lands, tenements and hereditaments. *Fleta*, lib. 3, c. 15, § 5. 2 *Bl. Com.* 199, 311. 3 *Id.* 176.

**JURIS POSITIVI.** L. Lat. Of positive law; a regulation or requirement of positive law, as distinguished from natural or divine law. 1 *Bl. Com.* 439. 2 *Steph. Com.* 286. The fixing the period of full age at twenty-one years, is said to be merely arbitrary and *juris positivi*. 1 *Bl. Com.* 464. So, rules of succession to estates are said to be creatures of the civil polity, and *juris positivi*, merely. 2 *Id.* 211.

**JURIS PRIVATI.** Lat. Of private right; subjects of private property. *Hale's Anal.* sect. xxiii.

**JURIS PUBLICI.** Lat. Of common right; of common or public use; such things as, at least in their own use, are common to all the king's subjects; as common highways, common bridges, common rivers, and common ports. *Hale's Anal.* sect. xxiii. The phrase *publici juris*

is also used. *Hale de Jur. Mar.* pars 1, c. 3.

**JURIS UTRUM.** L. Lat. In English law. A writ which lay for the incumbent of a benefice, to recover the lands or tenements belonging to the church, which were aliened by his predecessor. *Termes de la Ley.* F. N. B. 48 R, 49. Sometimes called "the parson's writ of right," being the highest writ he could have. 3 *Bl. Com.* 252.

**JURISCONSULTUS.** Lat. [from *jus*, law, (*juris*, of law,) and *consultus*, consulted.] In the civil law. One who is consulted on matters of law; a learned person who gives counsel on questions of law; a jurisconsult. The *jurisconsulti* of the Roman law were learned persons (*prudentes*) who were authorized to give answers on matters of law, (*quibus permissum erat de jure respondere*), and whose opinions (called *responsa prudentum*) were of binding authority. *Inst.* 1. 2. 8.

*JCtus* or *ICTus* is sometimes used as a contraction of this word.

**JURISDICTION.** Lat. [from *jus*, law, right, (*juris*, of law,) and *dictio*, a speaking, declaring, or determining.] In old English law. Jurisdiction; authority to judge, or administer justice. *Nihil aliud est jurisdictio quam habere auctoritatem judicandi sive jus dicendi inter partes de actionibus personarum et rerum, secundum quod deductæ fuerint in judicium per auctoritatem ordinariam vel delegatam*; jurisdiction is nothing else than the having authority of judging or of administering justice [declaring the law] between the parties to personal and real actions, according as they may have been brought into court by ordinary or delegated authority. *Bract.* fol. 400 b. See *Fleta*, lib. 6, c. 37, § 1.

*Jurisdictio est potestas de publico introducta, cum necessitate juris dicendi*; jurisdiction is a power introduced of common right, [by public authority or for the common benefit,] arising out of the necessity of declaring the law. 10 *Co.* 73 a, *The case of the Marshalsea*. 1 *Bulstr.* 211. This definition is borrowed from the civil law. *Id. ibid.*

**JURISDICTION.** [Lat. *jurisdictio*, q. v.] Authority to judge, or administer justice; power to act judicially; power or right to pronounce judgment.\*—The right by which judges exercise their power. *Hale's Anal.* sect. xi.—The power of hear-

ing and determining causes, and of doing justice in matters of complaint. *Hallifax, Anal.* b. 3, c. 8, num. 4. "The power to hear and determine a cause is jurisdiction." Baldwin, J. 6 *Peters' R.* 691, 709. 2 *Howard's R.* 319, 338. To have jurisdiction in a criminal case is to have power to inquire into the facts, to apply the law, and to declare the punishment in a regular course of judicial proceeding. Shaw, C. J. 3 *Metcalf's R.* 460, 462. See *United States Digest*, Jurisdiction.

In a more general sense—power to make law; power to legislate or govern; power or right to exercise authority.

**JURISPERITUS.** Lat. [from *jus*, law, (*juris*, of law,) and *peritus*, skilled.] Skilled or learned in the law.

**JURISPRUDENCE.** [Lat. *jurisprudentia*, q. v.] The science of law; knowledge of law. See *Jurisprudentia*.

**JURISPRUDENTIA.** Lat. [from *jus*, law, (*juris*, of law,) and *prudentia*, wisdom, knowledge.] In the civil and common law. Jurisprudence, or legal science.

*Jurisprudentia est divinarum atque humanarum rerum notitia, justī atque injustī scientia*; jurisprudence is the knowledge of things divine and human, the science of what is right and what is wrong. *Dig.* 1. 1. 10. 2. *Inst.* 1. 1. 1. This definition is adopted by Bracton, word for word. *Bract.* fol. 3.

*Jurisprudentia legis communis Angliæ est scientia socialis et copiosa*; The jurisprudence of the common law of England is a social and copious science: "social, in that it agreeth with the principles and rules of other excellent sciences, divine and human; copious, for that, *quamvis ad ea quæ frequentius accidunt jura adaptantur*, (though laws are adapted to those cases which more frequently happen) yet in a case so rare, and of such a quality that loss is the assured end of the practice of it, there should be such a multitude and farrago of authorities in all successions of ages, in our books and book-cases, for the deciding of a point of so rare an accident." 7 *Co.* 28 a, *Calvin's case*.

**JURIST.** [from Lat. *jus*, law.] One who is versed or skilled in law; answering to the Lat. *jurisperitus*, (q. v.)

One who is skilled in the civil law, or law of nations. The term is now usually applied to those who have distinguished themselves by their writings on legal subjects.

VOL. II.

**JURNALE.** L. Lat. In old records. The journal or diary of accounts in a religious house. *Kennett's Par. Ant.* 571. *Cowell*.

**JURNEDUM.** L. Lat. In old English law. A journey; a day's travelling. *Cart. S. Edmund.* cited in *Cowell*.

**JUROR.** [L. Fr. *jurour*, *jourour*; L. Lat. *jurator*.] In practice. One of a jury; a person sworn (*juratus*) on a jury; a juryman. See *United States Digest*, Jurors.

**JURY.** [L. Fr. *jure*, *juree*; L. Lat. *jurata*, qq. v.] In practice. A certain number of men, selected according to law, and sworn (*jurati*) to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them. This definition embraces the various subdivisions of juries, as *grand jury*, *petit jury*, *common jury*, *special jury*, *coroner's jury*, *sheriff's jury*, (qq. v.)

In a narrower sense, twelve men, selected and sworn according to law, constituting the ordinary and proper tribunal for the trial of issues of fact in actions at law; otherwise termed the *petit jury*, to distinguish it from the grand jury.\* A jury, *ex vi termini*, imports twelve men. 6 *Metcalf's R.* 231, arg. "That the term 'jury,' without addition or prefix, imports a body of twelve men in a court of justice, is as well settled as any legal proposition can be." Thurman, C. J. 4 *Ohio St. R.* 177. See 2 *Wisconsin R.* 22. 3 *Id.* 219. 3 *Kernan's R.* 427. 2 *Id.* 190. 2 *Parker's Crim. R.* 312.

**JURY BOX.** In practice. The place in court (strictly, an enclosed place) where the jury sit during the trial of a cause. 1 *Archb. Pr.* 208. 1 *Burr. Pr.* 455.

**JURY MAN.** One of a jury; a juror. Little used.

**JURY PROCESS.** In practice. The process by which a jury is summoned in a cause, and by which their attendance is enforced. In England, it consists of the writs of *venire facias*, and *distringas juratores*. 2 *Tidd's Pr.* 777. *Chitt. Arch. Pr.* 249. 2 *Steph. Com.* 589. See *Venire*.

**JUS.** Right in general, or in the abstract; justice; equity; otherwise termed *fas*; (L. Lat. *rectum*, Fr. *droit*.) *Bract.* fol. 2 b. *Fleta*, lib. 6, c. 1, § 1. See *Rectum*, *Right*.

Law. *Dig.* 1. 1. 1. pr. *Id.* 1. 1. 10. 1. *Id.* 1. 2. 2. 12. *Jus publicum*; public law. *Id.* 1. 1. 1. 2.

Law, as distinguished from equity; strict law, (*pro rigore juris.*) *Bract.* fol. 3.

A, or the law. *Jus civile*; the civil law. *Jus gentium*; the law of nations. *Inst.* 1. 1. 2. *Dig.* 1. 1. 5, 6. *Bract.* fol. 3 b, 4. See *Law*.

A, or the right; as applied to a particular person or subject. *Jus ad rem*; a right to a thing. *Jus possessionis*; the right of possession. See *infra*.

A rule of law or regulation. *Jus vetus*; the old rule or law. *Jus novum*; the new rule. *Inst.* 2. 13.

An action. *Bract.* fol. 3. Or rather, those proceedings in the Roman action which were conducted before the prætor. See *Actio*.

Power or authority. *Sui juris*; in one's own power; independent. *Inst.* 1. 8. pr. *Bract.* fol. 3. *Alieni juris*; under another's power. *Inst.* 1. 8. pr.

The profession, (ars) or practice of the law. *Jus ponitur pro ipsa arte.* *Bract.* fol. 2 b.

A court or judicial tribunal, (*locus in quo redditur jus.*) *Bract.* fol. 3.

**Jus est ars boni et æqui.** Law is the science of what is good and just. *Dig.* 1. 1. 1. 1. *Bract.* fol. 2 b. This definition is considered by the learned editor of Mackeldy's Civil Law, to be inaccurate or imperfect, as it makes law merely the science of morals, or, at most, the science of equity. 1 *Mackeld. Civ. Law*, 122, 123, Kaufmann's note, *ibid.*

**Jus est norma recti; et quicquid est contra normam recti est injuria.** Law is a rule of right; and whatever is contrary to the rule of right is an injury. 3 *Bulstr.* 313.

**Jus et fraus nunquam cohabitant.** Right and fraud never dwell together. 10 *Co.* 45 a, *Jenning's case*. Applied to the title of a statute. *Id. ibid.* *Best on Evid.* 250, § 205.

**Jus ex injuria non oritur.** A right does [or can] not arise out of a wrong. 4 *Bing.* 639. *Broom's Max.* 352, note.

**Jus non habenti tute non paretur.** One who has no right cannot be safely obeyed. *Hob.* 146.

**Jus respicit æquitatem.** The law regards equity. *Co. Litt.* 24 b. *Broom's Max.* 39, [112.]

**JUS ACCRESCENDI.** L. Lat. The right of survivorship; sometimes called the right of accruer or accretion. *Bract.* fol. 262 b. This is a principal incident peculiar to an estate held by several jointly;

and is so called, because, upon the death of one joint tenant, the right or share which he had, accumulates and increases, or *accrues to the survivor*; (*pars illa communis, per jus accrescendi, accrescit superstitibus.*) *Id. ibid.* *Fleta*, lib. 3, c. 4, § 2. 2 *Bl. Com.* 184. 1 *Steph. Com.* 316. 2 *Crabb's Real Prop.* 940, § 2306.

**Jus accrescendi inter mercatores, pro beneficio commercii, locum non habet.** The right of survivorship has no place between merchants, for the benefit of commerce. *Co. Litt.* 182 a. 2 *Story's Eq. Jur.* § 1207. There is no survivorship in cases of partnership, as there is in joint-tenancy. *Story on Partn.* § 90. It is an universally established principle of the whole commercial world, that the property and effects of a partnership do not, in case of a dissolution by death, belong exclusively to the survivors, but are to be distributed between them and the representatives of the deceased, in the same manner as they would have been upon a voluntary dissolution *inter vivos.* *Id.* § 342.

**Jus accrescendi præfertur oneribus.** The right of survivorship is preferred to incumbrances. *Co. Litt.* 185 a. Hence no dower or curtesy can be claimed out of a joint estate. 1 *Steph. Com.* 316.

**Jus accrescendi præfertur ultimæ voluntati.** The right of survivorship is preferred to the last will. *Co. Litt.* 185 b. A devise of one's share of a joint estate, by will, is no severance of the jointure; for no testament takes effect till after the death of the testator, and by such death the right of the survivor (which accrued at the original creation of the estate, and has therefore a priority to the other) is already vested. 2 *Bl. Com.* 186. 3 *Steph. Com.* 316.

**JUS AD REM.** Lat. In the civil law. A right to a thing. A personal right applying only against the actual obligee, as distinguished from *jus in re*, a right in the thing itself, which is a real right having effect against every third person. 1 *Mackeld. Civ. Law*, 321, Kaufmann's note. Defined by Huberus and Heineccius, *facultas competens personæ in personam, ut hæc aliquid dare vel facere teneatur*; (a power belonging to one person against another person, [by which] the latter may be compelled to give or do something.) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 332. Property consisting in action or obligation is called *jus ad rem*; property in possession or do-

minion is called *jus in re*. *Hallifax, Anal.* b. 2, c. 1, num. 9. Property in action, when considered with regard to the person from whom it is due, is called obligation; when considered with regard to the person to whom it is due, it is called *jus ad rem*. *Id.* c. 13, num. 1. *Story's Conf. Laws*, § 530. These terms are derived from the canon law. 2 *Wooddes. Lect.* 235. 1 *Kent's Com.* 177.

In the canon law. A right to a thing. An inchoate and imperfect right, such as is gained by nomination and institution, as distinguished from *jus in re*, or complete and full right, such as is acquired by corporeal possession. *Decretal.* lib. 2, tit. 4, c. 40. 2 *Bl. Com.* 312.

In the common law. A right to a thing. A disseisee hath *majus jus ad rem*, viz. *in jure*, to have the land than the heir of the disseisor hath; but the heir of the disseisor hath *majus jus in re*, viz. in possession, to have the land than the disseisee hath. *Perkins*, ch. 3, s. 218 B. Lord Bacon calls *jus in re* an estate; *jus ad rem*, a demand. *Bac. Read. Uses*.

In modern law. A right to a thing without the possession of it. 1 *Kent's Com.* 177. An imperfect or incomplete right. Cowen, J. 4 *Hill's* (N. Y.) R. 635, 640. A lien depending wholly upon contract is called a *jus ad rem*. 1 *Duer on Ins.* 538, note.

JUS AQUAM DUCENDI. Lat. In old English law. The right of leading water, (over another's land.) *Fleta*, lib. 4, c. 18, § 3. See *Aquæ ductus*.

JUS ALBINATUS. L. Lat. The *droit d'aubaine*, (q. v.) See *Albinatus jus*.

JUS BANCI. L. Lat. In old English law. The right of bench. The right or privilege of having an elevated and separate seat of judgment, anciently allowed only to the king's judges, who hence were said to administer high justice, (*summam administrant justitiam*.) *Blount*, voc. *Bank*.

JUS BELLI. Lat. The law of war. The law of nations as applied to a state of war, defining in particular the rights and duties of the belligerent powers themselves, and of neutral nations.

The right of war; that which may be done without injustice, with regard to an enemy. *Grotius de Jure Belli*, lib. 1, c. 1, § 3.

JUS CIVILE. Lat. Civil law; the civil law. The whole body of law peculiar to any state; the law by which particular districts, communities or nations are gov-

erned. *Quod quisque populus sibi jus constituit, id ipsius proprium civitatis est, vocaturque jus civile, quasi jus proprium ipsius civitatis*; that law which every people establishes for itself is peculiar to the state which establishes it, and is called civil law, being, as it were, the proper law of such state (*civitatis*.) *Inst.* 1. 2. 1. Otherwise called by Blackstone, *municipal law*. 1 *Bl. Com.* 44.

The civil law of the Romans, in particular; the law used by the Roman people; (*Jus civile Romanorum*.) *Inst.* 1. 2. 2. Now called emphatically "the civil law."

Among the Romans, the term *jus civile* was used in a more restricted sense, to signify all the Roman law, except the *jus honorarium*. *Dig.* 1. 1. 7, pr. And, in a still more restricted acceptation, to denote only the *auctoritas prudentum*, and the *disputatio fori*. *Dig.* 1. 2. 2, 5, 12.

JUS CIVITATIS. Lat. In the Roman law. The right of citizenship, (the right of the city,) the right of a Roman citizen. *Butler's Hor. Jur.* 27. See *Civitas*.

In English law, "*jus civitatis* answers to that we call denization or naturalization." *Bacon's Works*, iii. 265.

JUS COMMUNE. Lat. In the civil law. Common right; the common and natural rule of right, as opposed to *jus singulare*, (q. v.) 1 *Mackeld. Civ. Law*, 181, 188. See *Dig.* 50. 17. 81. Bracton uses the phrase in this sense. *Poterit quis renuntiare iis quæ pro se et suis introducta sunt contra jus commune*; a person may relinquish rights introduced for the benefit of himself and his, [that is, those claiming under him,] against the common rule of law. *Bract.* fol. 49.

In English law. The common law, answering to the Saxon *folcright*. 1 *Bl. Com.* 67.

JUS CORONÆ. Lat. In English law. The right of the crown, or rather to the crown; the right of succession to the throne. 1 *Bl. Com.* 191. 2 *Steph. Com.* 434.

JUS CUDENDÆ MONETÆ. L. Lat. In old English law. The right of coining money. 2 *How. St. Trials*, 118.

JUS CURIALITATIS. L. Lat. In English law. The right of curtesy. *Spelman*. See *Curialitas, Curtesy*.

JUS DARE. Lat. To give law; to make law. The province of the legislative power. 3 *P. Wms.* 485. See *Jus dicere*.

JUS DELIBERANDI. Lat. In the civil law. The right of deliberating; a

right granted by the prætor to the heir, allowing him time to consider whether he would accept the inheritance or not. *Inst.* 2. 19. 5. *Dig.* 28. 8. *Cod.* 6. 30. See *Deliberare*. Adopted in Scotch law. *Bell's Dict.*

**JUS DICERE.** Lat. To declare the law; to say what the law is. The province of a court or judge. "My business in this and every other case, is *jus dicere, non jus dare*." Lord Henley, C. 2 *Eden*, 29. 3 *P. Wms.* 485.

**JUS DISPONENDI.** L. Lat. The right of disposing. 2 *Kent's Com.* 174. 3 *Id.* 44.

**JUS DUPLICATUM.** Lat. A double right; the right of possession united with the right of property; otherwise called *droit droit*. 2 *Bl. Com.* 199.

**JUS FALCANDI.** Lat. In old English law. The right of mowing or cutting. *Fleta*, lib. 4, c. 27, § 1.

**JUS FECIALE.** Lat. In the Roman law. The law of arms. *Taylor's Civ. Law*, 63.

**JUS FIDUCIARIUM.** Lat. In the civil law. A right in trust, as distinguished from *jus legitimum*, a legal right. 2 *Bl. Com.* 328. A right for which there is a remedy, but only in conscience. *Bacon's Read. Uses*.

**JUS FLUMINUM.** Lat. In the civil law. The right to the use of rivers. *Loccenius de Jur. Mar.* lib. 1, c. 6.

**JUS FODIENDI.** Lat. In the civil and old English law. A right of digging on another's land. *Inst.* 2. 3. 2. *Bract.* fol. 222. *Fleta*, lib. 4, c. 19, § 6.

**JUS GENTIUM.** Lat. The law of nations. *Quod naturalis ratio inter omnes homines constituit, id apud omnes gentes peræque custoditur, vocaturque jus gentium, quasi quo jure omnes gentes utantur*; that law which natural reason has established among all men is equally observed among all nations, and is called the law of nations, as being the law which all nations use. *Inst.* 1. 2. 1. *Dig.* 1. 1. 9. *Id.* 1. 1. 1. 4. *Id.* 1. 1. 5. *Id.* 41. 1. 1. 1 *Bl. Com.* 43. 1 *Kent's Com.* 7. 1 *Mackeld. Civ. Law*, 21, § 31. *Id.* 124, § 113. See *Grotius de Jur. Bell.* lib. 2, c. 8, § 26. *Tayl. Civ. Law*, 127.

**JUS GERANII.** L. Lat. In old European law. Literally, the right of the crane; the right of unloading goods from vessels by means of a hoisting engine called a crane, (*geranium*.) *Loccenius de Jur. Mar.* lib. 1, c. 10. See *Jus Stapulæ*.

**JUS GLADII.** Lat. In the civil law. The right of the sword; the executory power of the law; the right, power or prerogative of punishing for crime. 4 *Bl. Com.* 177. *Potestas animadvertendi in facinorosos. Calv. Lex.* Sometimes called *potestas gladii*, (the power of the sword.) *Dig.* 50. 17. 70.

**JUS HAURIENDI.** Lat. In civil and old English law. The right of drawing water. *Fleta*, lib. 4, c. 27, § 1.

**JUS HONORARIUM.** Lat. In the Roman law. The honorary law. A code of equitable jurisprudence compiled from the edicts of the prætors and ædiles. *Inst.* 1. 2. *Dig.* 1. 2. 2. 10, 12. *Hallifax, Anal.* b. 1, c. 2, num. 12. 1 *Spence's Chancery*, 322, 324. 1 *Mackeld. Civ. Law*, 23, § 33. So called *ab honore prætoris*, that is, from the public offices with which the prætors and ædiles were invested, and from which that law issued; and hence signifying law by the magistrates. *Id. ibid.* note (d.) *Inst.* 1. 2. 7. Called in the Digests, the living voice of the civil law, (*viva vox juris civilis*.) *Dig.* 1. 1. 8.

**JUS IMMUNITATIS.** Lat. In the civil law. The law of immunity, or exemption from the burden of public office. *Dig.* 50. 6.

**JUS INDIVIDUUM.** L. Lat. An individual or indivisible right; a right incapable of division. 36 *Eng. Law. & Eq. R.* 25.

**JUS IN RE.** Lat. A right in a thing. Defined by the civilians, *facultas homini in rem competens, sine respectu ad certam personam*; a power belonging to a man over a thing, without reference to any particular person. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 332. A right in a thing itself, having effect against every third person. 1 *Mackeld. Civ. Law*, 321, § 294, Kaufmann's note. A fixed right of property, annexed or attached to a thing. *Story on Bailm.* 93 g. See *Story's Confl. Laws*, § 371.—Property in possession or dominion, as distinguished from *jus ad rem*, (q. v.) *Hallifax, Anal.* b. 2, c. 1, num. 9. *Story's Confl. Laws*, § 530.

A right in a thing, implying both right and possession. 1 *Kent's Com.* 177. A complete, as distinguished from an imperfect right.\* Cowen, J. 4 *Hill's (N. Y.) R.* 635, 640.—A lien accompanied with possession; a visible lien. 1 *Duer on Ins.* 538, note.

**JUS LATII.** Lat. In the Roman law.

The right of *Latium* or of the Latins. The principal privilege of the Latins seems to have been the use of their own laws, and their not being subject to the edicts of the prætor; and that they had occasional access to the freedom of Rome, and a participation in her sacred rites. *Butler's Hor. Jur.* 28.

**JUS LEGITIMUM.** Lat. In the civil law. A legal right; one which was remedied by the ordinary course of law. 2 *Bl. Com.* 328. *Bacon's Read. Uses.* Cowen, J. 2 *Hill's* (N. Y.) *R.* 418, 424.

**JUS MARITI.** Lat. The right of a husband; especially the right which a husband acquires to his wife's moveable estate by virtue of the marriage. 1 *Forbes' Inst.* part 1, p. 63. *Bell's Dict.*

**JUS MERUM.** L. Lat. In old English law. Mere or bare right; the mere right of property in lands, without either possession or even the right of possession. 2 *Bl. Com.* 197. *Bract.* fol. 23. *Fleta*, lib. 5, c. 5, § 37.

**JUS NATURÆ.** Lat. The law of nature. See *Jus naturale*.

**JUS NATURALE.** Lat. Natural law. The name given among the Romans to that law which is derived from the animal nature of man, and from those instincts which he has in common with the brute creation. 1 *Mackeld. Civ. Law*, 124, § 113. *Id.* 125, 126, Kaufmann's note. *Dig.* 1. 1. 1. 4. *Tayl. Civ. Law*, 111. *Bract.* fol. 3 b.

The law of nations (*jus gentium*) was sometimes called by this name. *Inst.* 1. 2. 11. *Id.* 2. 1. 11. See *Tayl. Civ. Law*, 128.

Grotius defines *jus naturale* to be *dictatum rectæ rationis, indicans actui alicui, ex ejus convenientia aut disconvenientia cum ipsa natura rationali, inesse moralem turpitudinem aut necessitatem moralem*; which Dr. Taylor translates, "the rule and dictate of right reason, showing the moral deformity or moral necessity there is in any act, according to its suitableness or unsuitableness to a reasonable nature." *Grot. de Jur. Bell.* lib. 1, c. 1, § 10. *Tayl. Civ. Law*, 99.

**JUS NAVIGANDI.** Lat. The right of navigating or navigation; the right of commerce by ships or by sea. *Loccenius de Jur. Mar.* lib. 1, c. 3.

**JUS NECIS.** Lat. In the Roman law. The right of death; or of putting to death. A right which a father anciently had over his children. 3 *Gibbon's Rom.*

*Emp.* 169, (Am. ed. 1844.) *Adam's Rom. Ant.* 51.

**JUS NON SCRIPTUM.** Lat. The unwritten law. 1 *Bl. Com.* 64.

**JUS PAPIRIANUM**, or *Jus Civile Papirianum*. Lat. The civil law of Papirius. The title of the earliest collection of Roman law, said to have been made in the time of Tarquin, the last of the kings, by a *pontifex maximus* of the name of Sextus or Publius Papirius. *Dig.* 1. 2. 2. 2. Very few fragments of this collection now remain, and the authenticity of these has been doubted. 1 *Kent's Com.* 517. 1 *Mackeld. Civ. Law*, 14, § 21.

**JUS PASCENDI.** Lat. In civil and old English law. The right of pasturing cattle. *Inst.* 2. 3. 2. *Dig.* 8. 3. 1. 1. *Bract.* fol. 53 b, 222. *Fleta*, lib. 4, c. 27, § 1.

**JUS PATRONATUS.** L. Lat. In English ecclesiastical law. The right of patronage; the right of presenting a clerk to a benefice. *Blount*.

A commission from the bishop, where two presentations are offered upon the same avoidance, directed usually to his chancellor and others of competent learning, who are to summon a jury of six clergymen and six laymen, to inquire into and examine who is the rightful patron. 3 *Bl. Com.* 246. 3 *Steph. Com.* 517.

**JUS PISCANDI.** Lat. In civil and old English law. The right of fishing. *Fleta*, lib. 4, c. 27, § 1. *Loccenius de Jur. Mar.* lib. 1, c. 9.

**JUS PORTUS.** L. Lat. In maritime law. The right of port or harbor. *Loccenius de Jur. Mar.* lib. 1, c. 8.

**JUS POSSESSIONIS.** Lat. A, or the right of possession, or seisin. *Bract.* fol. 3. *Fleta*, lib. 4, c. 1, § 2. *Co. Litt.* 266 a. 3 *Bl. Com.* 177, 191.

**JUS POSTLIMINII.** Lat. In the civil law. The right of postliminy; the right or claim of a person who had been restored to the possession of a thing, or to a former condition, to be considered as though he had never been deprived of it. *Dig.* 49. 15. 5. 3 *Bl. Com.* 107, 210. See *Postliminium*.

In international law. The right by which property taken by an enemy, and recaptured or rescued from him by the fellow-subjects or allies of the original owner, is restored to the latter upon certain terms. 1 *Kent's Com.* 108.

**JUS PRÆLATIONIS.** Lat. The right of preference or priority; the priority of

one creditor over another. *Story Conf. Laws*, § 325 c.

**JUS PRÆSENS.** Lat. In the civil law. A present or vested right; a right already completely acquired. 1 *Mackeld. Civ. Law*, 174, § 183.

**JUS PRÆTORIUM.** Lat. In the civil law. The discretion of the prætor, as distinct from the *leges*, or standing laws. 3 *Bl. Com.* 49. That kind of law which the prætors introduced for the purpose of aiding, supplying or correcting the civil law, for the public benefit. *Dig.* 1. 1. 7. Called also *Jus honorarium*, (q. v.)

**JUS PRECARIUM.** Lat. In the civil law. A right in courtesy, for which the remedy was only by entreaty, (*prece*), or request, (or for which, in other words, there was no remedy at all.) *Bacon's Read. Uses.* 2 *Bl. Com.* 328. Cowen, J. 2 *Hill's* (N. Y.) *R.* 418, 424.

**JUS PROPRIETATIS.** Lat. The right of property, as distinguished from the *jus possessionis*, or right of possession. *Bract.* fol. 3. *Fleta*, lib. 4, c. 1, § 2. Called by Bracton (*ubi supra*) *jus merum*, the mere right. 2 *Bl. Com.* 197. 3 *Id.* 19, 176.

**JUS PUBLICUM.** Lat. In the Roman law. Public law; that which regards the condition of the Roman state; (*quod ad statum rei Romanæ spectat.*) *Inst.* 1. 1. 4. *Dig.* 1. 1. 1. 2. This definition is borrowed by Bracton, who accommodates it to the English jurisprudence. *Est jus publicum quod ad statum reipublicæ pertinet.* *Bract.* fol. 3 b.

**Jus publicum, privatorum pactis mutari non potest.** A public law or right cannot be altered by the agreements of private persons. *Dig.* 2. 14. 38. See *Id.* 2. 15. 3, pr. Another form of the maxim *Conventio privatorum non potest publico juri derogare.*

**JUS RELICTÆ.** L. Lat. The right of a relict; the right or claim of a relict or widow to her share of her husband's estate, particularly the moveables. 2 *Kames' Equity*, 340. 1 *Forbes' Inst.* part 1, p. 67. *Bell's Dict.*

**JUS SCRIPTUM.** Lat. In the Roman law. Written law; answering to the Gr. νόμος ὑγγραφος. *Inst.* 1. 2. 3. All law that was actually committed to writing, whether it had originated by enactment or by custom, in contradistinction to such parts of the law of custom as were not committed to writing. 1 *Mackeld. Civ. Law*, 125, § 113.

In English law. Written law, or statute law, otherwise called *lex scripta*, as distinguished from the common law, *lex non scripta*. 1 *Bl. Com.* 62.

*Jus scriptum* is used in *Fleta* to denote the civil law, as distinguished from the law of England. *Quod in jure scripto jus appellatur, in lege Angliæ rectum esse dicitur*; that which in the civil law is called *jus*, in the law of England is said to be *rectum*, (right.) *Fleta*, lib. 6, c. 1, § 1. This passage is quoted by Lord Coke. *Co. Litt.* 158.

**JUS SECANDI.** Lat. In the old English law. The right of cutting. *Fleta*, lib. 4, c. 27, § 1.

**JUS SINGULARE.** Lat. In the civil law. A peculiar or anomalous rule, differing from the *jus commune* or common rule of right, and established for some special reason. 1 *Mackeld. Civ. Law*, 181, § 188.

**JUS STAPULÆ.** L. Lat. In old European law. The law of staple; the right of staple. A right or privilege of certain towns, of stopping imported merchandise, and compelling it to be offered for sale in their own markets. *Loccen. de Jur. Mar.* lib. 1, c. 10.

**JUS STRICTUM.** Lat. Strict law. See *Stricti juris*.

**JUS TERTII.** L. Lat. The right of a third party; the right or interest of a third person. 1 *Curtis' R.* 345.

**JUS TRIUM LIBERORUM.** Lat. In the Roman law. A right or privilege allowed to the parent of three or more children. 2 *Kent's Com.* 85. 2 *Bl. Com.* 247. These privileges were, an exemption from the trouble of guardianship, priority in bearing offices, and a treble proportion of corn. *Adam's Rom. Ant.* 227, (Am. ed.)

**JUS VENANDI.** Lat. In old English law. A right of hunting on another's land. *Bract.* fol. 222. *Fleta*, lib. 4, c. 27, § 1.

**JUSJURANDUM.** Lat. In the civil law. An oath. *Inst.* 4. 16. 1. *Dig.* 12. 2. *Cod.* 4. 1. *Juramentum*, (q. v.) is the ordinary law-Latin word. *Jusjurandum* is used in the Books of Feuds. *Feud. Lib.* 2, tit. 2. Grotius uses both words indifferently. *De Jur. Bell.* lib. 2, c. 13.

**Jusjurandum inter alios factum nec nocere nec prodesse debet.** An oath made between others ought neither to hurt nor profit. 4 *Inst.* 279. This is merely a special application of the maxim, *Res inter*

*alios acta alteri nocere non debet*, (q. v.) See *Dig.* 12. 2. 10.

JUSTA. See *Justus*.

JUSTA CAUSA. Lat. In the civil law. A just cause; a lawful ground; a legal transaction of some kind. 1 *Mackeld. Civ. Law*, 287, § 274. See *Grotius de Jur. Bell.* lib. 2, c. 23, § 13.

JUSTE. Lat. In the civil law. Justly; lawfully; by title, or upon some lawful ground, (*ex causâ titulore*.) *Calv. Lex*.

Justly; regularly; lawfully; in due form of law. *Id.*

JUSTICE. L. Fr. and Eng. [Lat. *justitia*.] The virtue which consists in giving to every one what is his due. *Webster*. Conformity to the law both in will and act. The definition of justice in the Roman civil law makes it to consist in the will or disposition (*voluntas*) alone. Taylor defines it, after that law, "that virtue of the human mind by which we are disposed to render to every man what is due to him." *Civil Law*, 83. See *Justitia*.

That which is one's due or desert; the giving or administering of which is the object and end of the law.\* 2 *Inst.* 56.

JUSTICE. Fr. In feudal law. Jurisdiction; judicial cognizance of causes or offences; the right of dispensing justice; the hereditary jurisdiction of a feudal lord. There was an extremely ancient distinction in the feudal law, between the *high justice* and the *low*. The former included the right of trying crimes of every kind, even the highest; the latter was confined to petty trespasses. 1 *Robertson's Charles V.* Appendix, note xxiii. There was sometimes a distinction between *high, middle* and *low justice*, (*justice haute, moyenne and basse*.) *Boutillier Somme Rurale*, lib. 1, tit. 21. *Esprit des Loix*, liv. 28, c. 42. *Guyot, Inst. Feod.* ch. 3.

The power to administer, of right, high, low and middle jurisdiction, is given in the Dutch patent of Mespath, or Newtown, L. I., March 28, 1642.

JUSTICE. L. Fr. and Eng. [L. Lat. *justicia, justiciarius*.] A title given to the judges of common law courts in England and the United States. This is of great antiquity in English law, and seems peculiar to the common law; never having been given to the judges of equity and admiralty courts. *Cowell*. See *Justices*. *Justice* occurs as a French word in Britton. *Britt.* cc. 2, 121.

Lord Coke observes that "in Glanville

(lib. 2, cap. 6,) a justice is called *justitia in ipso abstracto*, as it were justice itself, [in the abstract] which appellation remains still in English and French, to put them in mind of their duty and functions. But now, in legal Latin they are called *justiciarii, tanquam justi in concreto* [just in the concrete;] and they are called *justiciarii de banco, &c.* and never *judices de banco, &c.*" *Co. Litt.* 71 b. This ancient practice still remains unchanged; the judges of the English courts of Queen's Bench and Common Pleas, and, after them, the judges of the Supreme Court of the United States, and of most of the state supreme courts, being denominated in law, and according to the proper style of their respective courts, *justices*.

The term *justice*, however, is not confined to the superior courts, but is applied to judicial officers and magistrates of the lowest grade. See *Justices of the peace*.

To JUSTICE. [L. Lat. *justiciare*.] In old English practice. To do justice; to see justice done; to summon one to do justice. See *Justiciare, Justicies*.

JUSTICE AYRES (or AIRES.) In Scotch law. Circuits made by the judges of the Justiciary Courts through the kingdom, for the distribution of justice. *Bell's Dict.*

JUSTICE SEAT. In English law. The principal court of the forest, held before the chief justice in eyre, or chief itinerant judge, or his deputy; to hear and determine all trespasses within the forest, and all claims of franchises, liberties and privileges, and all pleas and causes whatsoever therein arising. 3 *Bl. Com.* 72. 4 *Inst.* 291. 3 *Steph. Com.* 440.

JUSTICEABLE. In old English law. Amenable; summonable. *Britt.* c. 34. See *Justice*.

JUSTICER. The old form of *justice*, following the L. Lat. *justitiarius*. *Blount*, voc. *Justice*. *Spelman*, voc. *Justitia*.

JUSTICES OF ASSISE. [L. Lat. *justitiiarii ad capiendas assisas*.] In old English law. A particular kind of justices in eyre, appointed or commissioned to determine certain actions called *assises*, or to take verdicts in such actions. *Magna Charta*, c. 12. *Bract.* fol. 105 b, 108. 3 *Bl. Com.* 57. They were not however specially known by this name until after the discontinuance of the justices in eyre, (q. v.) Lord Coke says they were "so called because writs of *assise of novel dis-*

*seisin* were returnable before them to be taken in their proper counties twice every year at the least, whereupon they had authority to *give judgment*, and award *seisin* and *execution*; and therefore, both for the number of them in times past, and for the greater authority they had than as justices of *nisi prius*, (which was to *try issues only*, except in *quare impedit* and *assises de darrein presentment*) they were denominated *justices of assises*." *Co. Litt.* 263 a.

In modern English law. The judges of the superior courts at Westminster, who go circuit into the various counties of England and Wales twice a year, for the purpose of disposing of such causes as are ready for trial at the *assises*. *Holthouse*. Sometimes also called justices of *nisi prius*. 3 *Bl. Com.* 58.

**JUSTICES IN EYRE.** [L. Lat. *justiciarii in itinere*; *justiciarii itinerantes* or *errantes*.] In old English law. Itinerant or travelling justices. Justices who travelled from county to county throughout the kingdom, usually once every seven years, sometimes with a general commission to determine all manner of causes, (*ad omnia placita*), and sometimes for certain special purposes, as to take assises of novel disseisin and mort d'ancestor, to deliver the gaols, and sometimes to take a single assise or two, and no more. *Bract.* fol. 105 b, 108. Bracton gives the forms of their commissions in each of these cases, at length. *Id.* fol. 109—111 b. They were first regularly established in the time of Henry II. 3 *Bl. Com.* 57. 1 *Spence's Chancery*, 115, 116.

**JUSTICES OF THE BENCH.** [L. Lat. *justiciarii de Banco*.] In old English law. The justices of the court of Common Bench or Common Pleas. *Flota*, lib. 2, c. 34.

**JUSTICES OF GAOL DELIVERY.** [L. Lat. *justiciarii ad gaolas deliberandas*.] In old English law. Justices in eyre, who acted under a special commission to deliver the gaols of persons confined in them for any contempt or offence. *Bract.* fol. 105 b, 108, 109 b, 110. See *Gaol delivery*.

The judges of the superior courts at Westminster now act in this capacity, under a commission of gaol delivery. 3 *Bl. Com.* 58.

**JUSTICES OF THE JEWS.** [L. Lat. *justiciarii ad custodiam Judæorum assignati*.] In old English law. Justices

appointed by Richard I. to carry into effect the laws and orders which he made for regulating the contracts and usury of the Jews. *Blount. Holthouse*.

**JUSTICES OF LABORERS.** In old English law. Justices appointed to redress the frowardness of laboring men, who would either be idle or have unreasonable wages. *Blount*.

**JUSTICES OF NISI PRIUS.** In English law. This title is now usually coupled with that of *Justices of Assize*; the judges of the superior courts acting on their circuits in both these capacities. 3 *Bl. Com.* 58, 59. Formerly, a distinction was made between these two kinds of justices; justices of *assise* having power to give judgment in a cause, but justices of *nisi prius* only to take the verdict. *Crompt. Jur.* 204. And Cowell makes another distinction; that the former had to deal in causes personal, as well as real, but the latter strictly only in the possessory writs called *assises*. See *Nisi prius*.

**JUSTICES OF OYER AND TERMINER.** [L. Lat. *justiciarii ad audiendum et terminandum*.] In old English law. Justices deputed upon some special or extraordinary occasion, to hear and determine some peculiar causes, such as cases of riotous assembly or insurrection, heinous misdemeanor or trespass. *Cowell. F. N. B.* 110.

The judges of the superior courts now act in this capacity, under a commission of *oyer and terminer*. 3 *Bl. Com.* 58. See *Oyer and Terminer*.

**JUSTICES OF TRAIL-BASTON.** In old English law. A kind of justices appointed by king Edward I. upon occasion of great disorders in the realm, during his absence in the Scotch and French wars. They were a kind of justices in eyre, with great powers adapted to the emergency, and which they exercised in a summary manner. *Cowell. Blount*. The origin of the term *trail-baston* has been variously explained. See *Cowell*.

**JUSTICES OF THE PAVILION.** In old English law. Judges of a pyepowder court, of a most transcendent jurisdiction, anciently authorized by the Bishop of Winchester, at a fair held on St. Giles' Hills near that city. *Cowell. Blount*.

**JUSTICES OF THE PEACE.** [L. Lat. *justitiarii ad pacem*.] In English law. County magistrates appointed by special commission under the great seal, to keep

*the peace* in the particular county named. Their commission appoints them all, jointly and severally, to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors in such county committed; in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence; the words of the commission running thus: *quorum aliquem vestrum*, A. B., C. D., &c. *unum esse volumus*; whence the persons so named are usually called justices of the *quorum*. 1 *Bl. Com.* 351. 3 *Steph. Com.* 40. 12 *East*, 559. See *Quorum*. They were anciently called conservators, wardens or keepers of the peace, and acquired the more honorable appellation of *justices*, after the statute 34 Edw. III. c. 1, gave them the power of trying felonies. 1 *Bl. Com. ub. sup.* As to justices in boroughs, see 3 *Steph. Com.* 40, note (u.)

In the United States, justices of the peace are either appointed by the executive, or elected by the people; and, in addition to their common law powers, generally have jurisdiction in civil cases. *United States Digest*, Justices of the Peace.

**JUSTICIAR.** [L. Lat. *justiciarius*, *justitiarius*; L. Fr. *justicier*.] In old English law. A justice or justicer. The judicial members of the court of *Aula Regis* were called the king's *justiciars*, and the chief of them, who was the presiding officer of the court, the *chief justiciar*. 3 *Bl. Com.* 38. *Gillb. C. Pleas*, Introd. 18. The corresponding modern titles are *justice* and *chief justice*. See *Justice*. Spelman has given a list of the chief justiciars of England under the Norman princes and their successors. *Gloss. voc. Justitia*.

**JUSTICIARE, Justitiare.** L. Lat. [from *justicia* or *justitia*, justice.] In old English law. To justice; to do justice or right; to compel a person to appear in court. *Bract.* fol. 308 b. 1 *Reeves' Hist. Eng. Law*, 125, 173, 174. Hence the writ of *justicies*, (q. v.) *Justiciari*; to be justified; to have justice. *Stat. Marlebr.* c. 1.

**JUSTICIARIUS, Justitiarius.** L. Lat. In old English law. A justice. *Mag. Chart.* 9 Hen. III. c. 12, 13.

**JUSTICIATUS.** L. Lat. [from *justiciare*, q. v.] In old English law. Judicature, prerogative or jurisdiction. *Blount*.

**JUSTICIÉ.** Fr. In old French law.

A seignior or feudal proprietor who had the right of *justice*, (q. v.)

**JUSTICIES, Justities.** L. Lat. (You justice.) In English practice. A writ (sometimes called *breve de justiciando*) directed to the sheriff, giving him a judicial authority to hear and determine a cause in the county court, of which he could not, by his ordinary power, hold plea. *Cowell. Bract.* fol. 308 b. *Finch's Law*, b. 4, ch. 19. So called from the emphatic word of its mandate in the Latin form:—*Præcipimus tibi quod justicies J. B. &c.*: We command you that you *justice* J. B. that, &c. *Reg. Orig.* 135, 139. *F. N. B.* 117 C. *Id.* 119, G. H. I. K. *Bract.* fol. 231, 308 b. *Fleta*, lib. 2, c. 62, § 2. To *justice* signified to summon or require to do justice, to compel to appear in court.

This writ is retained (though little used) in modern English practice, and is described by Blackstone as a special writ empowering the sheriff, for the sake of despatch, to do the same justice in his county court, as might otherwise be had at Westminster. 3 *Bl. Com.* 36. 3 *Steph. Com.* 395, 396. 1 *Tidd's Pr.* 78.

**JUSTIFIABLE HOMICIDE.** In criminal law. The killing of a human creature without fault or blame, even in the minutest degree; as where it is required by the absolute command of the law, or permitted for the advancement of public justice, or the prevention of some atrocious crime. In these instances, the slayer is to be totally acquitted and discharged, with commendation rather than blame. 4 *Bl. Com.* 178—181. 4 *Steph. Com.* 96.

**JUSTIFICATION.** [Lat. *justificatio*.] In pleading. A maintaining or showing a good reason in court, why one did such a thing, which he is called to answer. *Blount*. Pleas of justification are frequent in actions of trespass and case. 1 *Chitt. Pl.* 490—502. 3 *Bl. Com.* 306.

In practice. The procedure by which the competency or sufficiency of bail is established, or made out. 1 *Tidd's Pr.* 263. See *Justify*.

**JUSTIFY.** [L. Lat. *justificare*.] In practice. To make out, or establish according to law; particularly to establish the sufficiency of bail. When bail make oath (as they may be required to do,) before a proper officer, that they are housekeepers or freeholders, and are worth a certain amount over and above all debts, they are said to *justify*, or to *justify them-*

*selves*, as good and sufficient bail. 3 *Bl. Com.* 201. 1 *Tidd's Pr.* 263.

**JUSTITIA.** Lat. [from *justus*, q. v.] In the civil law. Justice. *Justitia est constans et perpetua voluntas jus suum cuique tribuendi*; Justice is the constant and perpetual disposition or will of giving to every man his right. *Inst.* 1. 1. pr. *Dig.* 1. 1. 10. It will be seen that justice is here defined to be a *disposition* or will, (*voluntas*,) rather than an outward conduct, and Bracton, who copies the definition word for word, and comments upon it, lays considerable stress upon this feature: *Dicitur voluntas tribuere jus suum, non quantum ad actum sed quantum ad affectionem.* *Bract.* fol. 2 b. Some of the modern civilians, however, regard this definition as altogether erroneous and untenable, unless *voluntas* be understood to imply that justice consisted not merely in an outward conformity with the law, but in a conduct that agreed with the precepts of the law from internal disposition and free volition. 1 *Mackeld. Civ. Law*, 121, 122, § 112. *Id.* 122, 124, Kaufmann's note. Fleta quotes the definition with the following modification: *Est autem justitia constans et perpetua voluntas, jus suum unicuique tribuens, vel hoc saltem affectans*; justice is a constant and perpetual disposition, giving to every man his right, or at least, desiring this. *Fleta*, lib. 4, c. 1, § 1.

**JUSTITIA.** In the common law. Justice. *Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam*; to no one will we sell, to no one will we deny or delay right or justice. *Magna Charta*, c. 29. Lord Coke construes *right* in this passage to mean law, as the means, and *justice* to be the end of law. 2 *Inst.* 56. 1 *Reeves' Hist.* 250, note.

*Justitia debet esse libera, quia nihil iniquius venali justitia; plena, quia justitia non debet claudicare; et celeris, quia dilatio est quædam negatio*; Justice ought to be free, because nothing is more iniquitous than venal justice; full, because justice ought not to halt; and speedy, because delay is a kind of denial. 2 *Inst.* 56. *Justitia est duplex*; viz. *severè puniens, et verè præveniens*; Justice is twofold, viz.: severely punishing, and really or efficiently preventing. 3 *Inst.* Epil.

*Justitia nemini neganda est.* Justice is to be denied to none. *Jenk. Cent.* 176, case 53.

*Justitia non est neganda, non differenda.*

Justice is not to be denied nor delayed. *Jenk. Cent.* 93, case 80.

*Justitia non novit patrem nec matrem; solam veritatem spectat justitia.* Justice knows not father nor mother; justice looks at truth alone. 1 *Bulstr.* 199.

**JUSTITIA.** L. Lat. A justice or judge of a court. *Glanv.* lib. 2, c. 6. From this has been derived, through the French, the modern *justice*, (q. v.) *Co. Litt.* 71 b.

**JUSTITIARE.** See *Justiciare*.

**JUSTITIARIUS.** L. Lat. A justiciar or justice. *Bract.* fol. 105, 106.

**JUSTITIUM.** Lat. In the civil law. A suspension or intermission of the administration of justice in courts; (*juris interstitio et cessatio*;) vacation time. *Calv. Lex. Aul. Gell. Noct. Att.* lib. 20, c. 1, § 43. Blount refers to this old term as used in the Laws of Canute.

**JUSTIZA, Justicia.** In old Spanish law. A supreme judge. A judicial magistrate peculiar to the kingdom of Aragon, who acted as the protector of the people and the controller of the prince. His person was sacred, his power and jurisdiction almost unbounded, and he was the supreme interpreter of the laws. Not only inferior judges, but the kings themselves were bound to consult him in any doubtful case, and to receive his responses with implicit deference. 1 *Robertson's Charles V.* 122, 123, sect. iii. and note xxxi. See 1 *Kent's Com.* 292, note. *Id.* 294, note.

**JUSTUS.** Lat. Just; right. Bracton, following the civil law idea of justice as a mere affection of the mind, (*justitia in mentibus justorum quiescit*,) considers *justus* as peculiarly appropriate to persons, in contradistinction to *æquus*, (equitable or righteous,) which was appropriate to things or acts. "Hence," he observes, "if we would speak properly, we should say a *righteous*, not a *just* judgment, and a *just*, not a *righteous* man, (*dicemus judicium æquum, non justum, et hominem justum non æquum*); but abusing these epithets we say a righteous man and a just judgment." *Bract.* fol. 3. This remark is important, as showing that the ideas and rules of the civil law had not then obtained that currency in England which is sometimes claimed for them.

Lawful; according to law; in due form of law. *Calv. Lex.*

**JUVENES.** Lat. (Youths or young men.) In old English law. Inferior clerks

of chancery, so called. *Crabb's Hist. Eng. Law*, 184.

**JUNTA.** Lat. According to. 1 *Ld. Raym.* 415. The same as *secundum*, in the civil law. 12 *Mod.* 218.

*Juxta formam statuti*; according to the form of the statute. *Req. Orig.* 16. The established phrase by which reference to a statute was expressed in old writs and records.

*Juxta tenorem sequentem*; according to the tenor following. 2 *Salk.* 417. A phrase used in the old books, when the very words themselves referred to, were set forth. *Id. ibid.* 1 *Ld. Raym.* 415.

*Juxta conventionem*; according to the covenant. *Fleta*, lib. 4, c. 16, § 6.

*Juxta ratam*; at or after the rate. *Dyer*, 82.

## K.

**KAIA.** L. Lat. A key, kay, or quay. *Spelman.* See *Kay*.

**KAIAGIUM.** L. Lat. Kayage or wharfage. *Spelman.* See *Kayage*.

**KAIN.** Sc. In Scotch law. A word derived from *canum*, a vocable used in ancient grants to signify the fowls or animals payable to the superior. In modern practice, it is used to express the poultry, &c. payable by a tenant to his landlord in terms of his lease. *Bell's Dict.* See *Canum*. It has evidently the sense of the English word "kind," in the expression "payment in kind," which possibly may have been derived from it.

**KALENDÆ.** Lat. Kalends or calends. See *Calendæ*, *Calends*.

**KALENDAR.** See *Calendar*.

**KALENDARIUM.** Lat. In the civil law. A calendar, a book of accounts, memorandum-book, or debt-book; a book in which accounts were kept of moneys loaned out on interest. *Dig.* 32. 64. So called, because the Romans used to let out their money and receive the interest on the *calends* of each month. *Calv. Lex.*

**KANC'.** An abbreviation of *Kancia*, *Kent*. 1 *Inst. Cler.* 28.

**KANCIA.** L. Lat. *Kent*, in England. *Fleta*, lib. 5, c. 31, § 10.

**KANTREF.** Brit. A hundred villages; a division of a county in Wales; a hundred. Another form of *cantred*, (q. v.) *Blount*.

**KARAXARE,** *Charazare.* L. Lat. [from Gr. *χαράττω*, to mark or stamp.] In old

records. To mark; to put down in characters or letters; to write. *Spelman*.

**KARL,** *Karle, Carl.* Sax. In Saxon and old English law. A man; a serving man, (*funulus*.) *Spelman.* *Buscarl*; a seaman. *Huscarl*; a house servant. *Id.*

**KARRATA.** L. Lat. In old records. A cartload. *Cowell.* *Blount*.

**KASKUN.** L. Fr. Every. *Kelham.* A corrupted form of *chescun*, (q. v.)

**KAST.** Swed. In Swedish law. Jettison; a literal translation of the Lat. *jactus*, (q. v.) *Loccen. de Jur. Mar.* lib. 2, c. 7, s. 1.

**KAST-GELD.** Swed. Contribution for a jettison; average. *Loccen.* lib. 2, c. 8, s. 1.

**KATIONTEES,** *Kariontees.* Gr. [from *καίρειν*, to descend.] In the civil law. Descendants; persons in the descending line. *Nov.* 118, c. 1.

**KATOXH,** *Katoxh.* Gr. [from *κατέχω*, to detain.] In the civil law. Detention; possession. *Dig.* 41. 2, 1. pr. See *Detentio*.

**KE.** L. Fr. That. A corruption of *que. E volums ke meismes celes chartres*; and we will that these same charters. *Conf. Cartar.* 25 Edw. I.

**KEELAGE.** [L. Lat. *killagium*.] In English law. A toll or duty payable on ships in a port. See *Hale de Jur. Mar.* pars 2, c. 6.

**KEEPER OF THE FOREST.** [L. Lat. *custos forestæ*.] In old English law. An officer, (called also chief warden of the forest,) who had the principal government of all things relating to the forest, and the control of all officers belonging to the same. *Cowell.* *Blount.* *Manwood*, cited *ibid*.

**KEEPER (or LORD KEEPER) OF THE GREAT SEAL.** [L. Lat. *custos magni sigilli*.] A high officer of state who holds or keeps the great seal of England; and whose office has, since the statute 5 Eliz. c. 18, been united with that of the lord chancellor; the office of chancellor being at this day created by the mere delivery of the queen's great seal into his custody. 3 *Bl. Com.* 47. 3 *Steph. Com.* 407.

**KEEPER OF THE PRIVY SEAL.** [L. Lat. *custos privati sigilli*.] In English law. A high officer of state, through whose hands pass all charters signed by the king, before they come to the great seal. He is a privy councillor, and was anciently called *Clerk of the privy seal*, in stat. 12 Ric. II. c. 11; *Gardein del privy seal*, in Rot. Parl. 11 Hen. IV. num. 28; and *Lord privy seal*,

in stat. 34 Hen. VIII. c. 4. *Cowell. Blount.*

KEINS. L. Fr. Oaks. *Yearb.* P. 7 Hen. VI. 47.

KENNING TO A TERCE. Sc. In Scotch law. The act of the sheriff in ascertaining the just proportion of the husband's lands which belong to the widow in right of her *terce*, or dower. *Bell's Dict.*

KERNELLEARE. L. Lat. In old English law. To fortify or embattle. *Kernelleare domum*; to build a house with a wall or tower *kernelled* or *crenellè*, with crannies or notches for the better convenience of shooting arrows and making other defence. *Cowell. Blount. Spelman.*

KEY. This appears as an English word as early as the time of Bracton, in the phrase *cone et keye*; being applied to women at a certain age, to denote the capacity of having charge of household affairs. *Bract.* fol. 86 b. See *Cone & Key*. The custody of the *keys* seems to have been then, as now, one of the prerogatives of the housewife. Hence it is said by the same author, that a wife should in certain cases be held to answer for the theft of her husband, if the thing stolen were found under the wife's *keys*, which keys the wife ought to have under her custody and care, (*quas quidem claves habere debet uxor sub custodia sua*;) that is to say, the keys of her spence, (*dispensæ*,) chest, (*arcæ*,) and writing-case, (*scrinii*,) *Bract.* fol. 151 b.

KEYNES. L. Fr. Oaks. *Yearb.* Add. M. 2 Edw. III. 27. *Barringt. Obs. Stat.* 151.

KEYS. In old English law. A guardian, warden or keeper. See *Claves insulæ*.

KEYS OF COURT. In old Scotch law. Certain officers of courts. See *Claves curiæ*.

KIDDLE, *Kiddel, Kidel, Kedel*. [L. Lat. *kidellus*, q. v.] In old English law. A dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of engines to catch fish. 2 *Inst.* 38. *Magna Charta*, c. 24. *Blount.*

KIDELLUS, *Kydellus*. L. Lat. In old English law. A kiddel, or wear. *Omnes kidelli deponantur de cetero penitus per Tamisiam, et Medeweyam, et per totam Angl' nisi per costeram maris*; all wears shall from henceforth be wholly pulled down by the Thames and the Medway, and throughout all England, except on the sea-coast. *Mag. Cart.* 9 Hen. III. c. 23.

Quoted and recognised as law, by Lord Ellenborough, in *Weld v. Hornby*, 7 *East*, 195. See *Fleta*, lib. 1, c. 20, § 40. *Hale de Jur. Mar.* pars 1, c. 5.

KIDNAPPING. The stealing and carrying away, or secreting a person. *Lewis' U. S. Crim. Law*, 17.—The forcible abduction or stealing away of a man, woman or child, from their own country, and sending them into another. 4 *Bl. Com.* 219.—An aggravated kind of abduction, consisting in the forcible carrying away, or fraudulent inveigling or decoying away a person. *Wharton's Am. Crim. Law*, § 1208. *Id.* §§ 1176—1201.

KIL. L. Fr. That he. *Kil facent les avaut dites charteres puplier*, e ke il facent; that he cause the aforesaid charters to be published, and that he cause, &c. *Conf. Cartar.* 25 Edw. I.

KILL. Anglo-Dutch. In New-York law. A creek or small stream. *Kill* is a Dutch word signifying a channel or bed of a river, and hence the river or stream itself. 1 *Comstock's R.* 107.

KIN. Relation or relationship by blood or consanguinity. "The nearness of *kin* is computed according to the civil law." 2 *Kent's Com.* 413. See *Next of Kin*.

KINDRED. Relatives by blood. "Kindred of the whole blood, preferred to kindred of the half blood." 4 *Kent's Com.* 404, notes.

KING'S BENCH. [L. Lat. *bancus regis*; L. Fr. *banc le roy*.] The highest court of common law in England, (called during the reign of a queen, as at present, the *Queen's Bench*, q. v.) consisting of a chief justice and four puisné justices, who are by their office the sovereign conservators of the peace, and supreme coroners of the land. It is so called, because the sovereign used formerly to sit there *in person*, and still is supposed so to do, the style of the court still being *coram ipso rege*, (before the king himself.) It is the remnant of the great original court of *Aula Regia* (q. v.) and is not, nor can be, from the very nature and constitution of it, fixed to any certain place, but may follow the sovereign's person wherever he goes; although it has for some centuries past usually sat permanently at Westminster. It takes cognizance both of criminal and civil causes; the former in what is called the *crown side* or *crown office*; the latter in the *plea side* of the court. Anciently its jurisdiction was confined to criminal matters and pleas of the crown, and to civil

actions of trespass, but it gradually usurped a jurisdiction over all actions between subject and subject, except real actions, in which it is now confined.\* 3 *Bl. Com.* 41—43. 4 *Id.* 265. 3 *Steph. Com.* 403, 404. 4 *Id.* 326.

**KING'S COUNSEL.** See *Queen's Counsel*.

**KING'S SILVER.** In old English practice. A fine due the king *pro licentia concordandi*, (for leave to agree) in the process of levying a fine. 5 *Co.* 39; 43. 2 *Inst.* 511. 2 *Bl. Com.* 350.

**KINSBOTE, Kinsbot.** Sax. [from *kin*, and *bote*, a satisfaction, or amends.] In Saxon law. A composition or satisfaction paid for killing a kinsman. *Spelman*, voc. *Bote*.

**KIRBY'S (or KIRKBY'S) QUEST.** In English law. An ancient record remaining with the remembrancer of the exchequer, being an inquisition or survey of all the lands in England, taken in the reign of Edward I. by John de Kirkby, his treasurer. *Blount. Cowell*.

**KISSING THE GOSPELS.** The act with which the ceremony of taking an oath by laying the hand upon the gospels, concludes. In modern law and practice, which do not generally require the party swearing to pronounce the words of the oath, the kiss is regarded as an essential part of the solemnity, being an expression of the party's assent to the oath as administered to him. Anciently, however, when the words of the oath were repeated by the party himself, the kiss was regarded rather as an act of reverence to the contents of the book, than as a necessary part of the oath. Hence the remark of Britton,—*et soient les evangelies beyses en tous honors, sicome nostre foy et nostre sauvacon*; and then should the gospels be kissed in all reverence, as our faith and our salvation. *Britt.* c. 52. In this latter view, the opinion of Dr. Paley seems to be correct. *Paley's Mor. Phil.* b. 3, c. 16. See *Oath*.

**ΚΑΗΡΟΣ, κληρος.** Gr. In the civil law. The clergy. *Nov.* 17, c. 16.

**ΚΑΗΡΙΚΟΣ, κληρικος.** Gr. In the civil law. A clerk; a clergyman. *Nov.* 3, in tit. et per tot.

**KNAVE.** [Sax. *cnafa*.] In old English law. A man servant. *Stat.* 14 *Edw.* III. st. 1, c. 3. 2 *Inst.* 493.

**KNIGHT.** [Sax. *cnicht*; Fr. *chivalier*; Lat. *miles, eques auratus*.] In English law. A title of honor or dignity, next be-

neath a peer or baronet. 1 *Bl. Com.* 403. Defined in the old books to be "one who bears arms, who for his virtue and martial prowess, is by the king, or one having his authority, exalted above the rank of gentleman, to a higher account or step of dignity," *Blount*. See *Stat. de Militibus*, 1 *Edw.* II. 2 *Inst.* 594—598.

**KNIGHTEN-GYLD.** Sax. A guild in London consisting of nineteen knights, founded by king Edgar. *Cowell*.

**KNIGHT-SERVICE.** [L. Lat. *servitium militare*; L. Fr. *service de chivaler*.] In old English and feudal law. A free but uncertain service by which lands were formerly held, being the most universal and esteemed the most honorable species of tenure; called in law French, *chivalry*. It was, in its nature, entirely military, and is said to have been created and provided for the defence of the realm. 2 *Bl. Com.* 62. *Litt.* sect. 103. *Co. Litt.* 75 b. To make a tenure by knight-service, a determinate quantity of land was necessary, which was called a *knight's fee*, (q. v.) and he who held such a fee was bound to attend his lord to the wars for forty days in every year, if called upon, which attendance was his rent or service for the land he claimed to hold. 2 *Bl. Com.* 62.

**KNIGHT'S FEE.** [L. Lat. *feodum militare*.] In old English law. A certain quantity of land, the possession of which was necessary to make a tenure by knight-service. The measure of a knight's fee in 3 *Edw.* I. was estimated at twelve ploughlands, and its value, (though it varied with the times,) in the reign of Edward I. and Edward II. was stated at 20*l.* per annum, 2 *Bl. Com.* 62. *Co. Litt.* 69. 2 *Inst.* 596. According to Selden, however, it did not consist of land of a fixed extent or value, but it was as much as the king was pleased to grant, upon the condition of having the service of one knight. *Tit. of Hon.* part 2, c. 5, sect. 17, 26.

**KNIGHTS OF THE SHIRE.** In English law. Members of parliament representing counties or shires, (two being elected from each county,) in contradistinction to *burgesses*, who represent boroughs or corporations. So called, because it was formerly necessary that they should be *knights*, but now any person may be chosen to fill the office, who has an estate worth 600*l.* per annum. *Wharton's Lex.* 2 *Steph. Com.* 362, 392. *Stat.* 1 & 2 *Vict.* c. 48. These knights or members are the representatives

of the landholders or landed interest of the kingdom. 1 *Bl. Com.* 172.

**KNOW ALL MEN.** In conveyancing. A form of public address, of great antiquity, and with which many written instruments, such as bonds, letters of attorney, &c. still commence. It is a literal translation of *Noverint universi*, or *Sciant*, which was anciently used. See *Noverint*.

**KNOWINGLY.** See *Scienter*.

**KNOWN-MEN.** A title formerly given to the Lollards. *Cowell*.

**KOINON, Κοινον.** Gr. In the civil law. A community. *Dig.* 49. 1. 1. 1.

**KOINOS NOMOS, Κοινος νόμος.** Gr. In the civil law. The common law; the general law of the empire. *Nov.* 79, c. 2.

**KOINONIA, Κοινωνία.** Gr. [from *κοινος*, common.] In the civil law. Community; partnership. *Inst.* 3. 26. pr.

**KOMES, Κομης.** Latino-Gr. In the civil law. Comes. An official title. *Nov.* 27, in tit. See *Comes*.

**KY.** L. Fr. Who. *LL. Gul. Cong.* ll. 5, 6.

**KYMORTHA.** Brit. In old English law. Assemblies. A corruption of *cymortha*, used in the stat. 4 Hen. IV. c. 27. *Barringt. Obs. Stat.* 360.

## L.

**L. 5.** An abbreviation of *Long Quinto*. One of the parts of the Year Books. *Dyer*, 37, marg. (Fr. ed.)

**LA.** L. Fr. There. *Dyer*, 62, (Fr. ed.) *La ou*; there where; whereas. *Kelham. L. Fr. Dict.* *Que la*; until that. *Kelham*.

**LABEL.** In English practice. A narrow slip of paper or parchment affixed to a deed or writing, for an appending seal. *Cowell*.

A copy of a writ in the Exchequer. 1 *Tidd's Pr.* 156.

**LABOUR A JURY.** In old practice. To tamper with a jury; to endeavor to influence them in their verdict, or their verdict generally. "Heydon, by his friends and servants, had *laboured* the jury not to appear." 1 *Leon.* 72. See *Dyer*, 48.

**LACERTA.** L. Lat. In old English law. A fathom. *Co. Litt.* 4 b.

**LACHES, Lachesse, Lasches.** L. Fr. and Eng. [from Fr. *lascher*, to loosen or slacken.] Slackness, negligence or remissness. *Litt. sect.* 403, 726. 1 *Bl. Com.* 247. 3 *Id.* 317.—"A neglect to do some-

thing which, by law, a man is obliged to do." Lord Ellenborough, 4 *M. & S.* 463.—Neglect to make a claim within a reasonable time.\* 2 *Story's Eq. Jur.* § 1520. 7 *Howard's R.* 234. Lord Coke calls this an old French word. *Co. Litt.* 380 b. But Cowell conjectures it may be an old English word; as much as to say *lack is*.

**LACTA.** L. Lat. In old English law. Defect in the weight of money; *lack* of weight. This word and the verb *lactare* are used in an assise or statute of the sixth year of King John. *Spelman*.

**LACUS.** Lat. In the civil law. A lake, a receptacle of water which is never dry. *Dig.* 43. 14. 1. 3.

**LACUS.** L. Lat. In old English law. Alloy or alloy of silver with base metal. *Fleta*, lib. 1, c. 22, § 6. This word is not found either in *Spelman* or *Cowell*.

**LADA.** L. Lat. [from Sax. *ladian*, to purge, to excuse.] In Saxon law. A purgation, or mode of trial by which one purged himself of an accusation; as by oath or ordeal. *Spelman*.

A water-course; a trench or canal for draining marshy grounds; in old English, a *lade* or *load*. *Spelman. Cowell*.

**LADA.** L. Lat. [from Sax. *lathian*, to convene or assemble.] In old English law. A court of justice; a *lade* or *lath*. *Cowell*.

**LÆSA MAJESTAS.** Lat. In old criminal law. Lese majesty; treason. See *Crimen læsæ majestatis*.

**LÆSIWERP, Lesiwerp.** Sax. [from *laisus*, bosom, or power, and *werpire*, to surrender or deliver up; or from Fr. *laisher*, to let go.] In old European law. A thing surrendered into the hands or power of another; a thing given or delivered. *Spelman*.

**LÆSTUM.** L. Lat. [Sax. *læthe*, *læth*.] In old English law. A lathe; a division of a county. *Spelman*. See *Lathe*.

**LAFORDSWIC, Hlafordswice.** Sax. [from *hlaford*, lord or master, and *swic*, betrayal.] In Saxon law. The betrayal of a master; treachery or treason against a lord. *LL. Hen. I.* c. 13. *LL. Canut.* c. 61. *Spelman*.

**LAG, Lah, Lagh.** Sax. Law. *Spelman*.

**LAGA.** L. Lat. [from Sax. *lag*.] Law. *Spelman*. *Lagam Edwardi regi, vobis reddo*: I restore to you the law of King Edward. *Chart. Hen. I.* A. D. 1100. *Bl. Introd. to Mag. Chart.* vii. ix. note. The

meaning of this word is discussed at much length in the preface to the translation of *Fortescue de L. L. Angliæ*, (ed. 1737,) p. xix. *et seq.*

**LAGAMANNUS**, *Lagemannus*. L. Lat. [from *laga*, (q. v.) and *man*.] In old English law. A law-man or lage-man; a lawful man, (*legalis homo*.) *Spelman*. *Domesday*, cited *ibid.* See *Lahman*.

**LAGAN**. Sax. [from *liggan*, to lie.] In old English law. A term used by Bracton to denote goods found in the sea, at a distance from the shore, (*in mari, longius a litore*;) under circumstances rendering it doubtful where they were intended to come to land, (*ita quod constare non possit ad quam terram vel regionem essent applicandæ*;) and which belonged to the finder, as being *in nullius bonis*. *Bract.* fol. 120. This word is considered by *Spelman* to be the same with *ligan*, (or *lagon*, as he writes the word.) But *ligan* differs from the word described by Bracton, in the very material circumstance of denoting an attachment to a buoy or cork, in order that the goods may be found by the owner. See *Ligan*. The two words, indeed, appear to have directly opposite meanings, and to be framed from different roots: *lagan*, from Sax. *ligan*, to lie; *ligan*, from Lat. *ligare*, Fr. *lier*, to tie. Bracton (*ub. sup.*) says *lagan* was a nautical term in his day, (*dicitur a nautis Lagan*.)

**LAGE**. [Sax. *lag*.] In old English law. Law. See *Dane lage*, *Mercen lage*.

**LAGE DAY**, *Lagh day*. In old English law. A law-day; a time of open court. 1 *Mon. Angl.* 279. *Cowell*. See *Dies juridicus*.

**LAGEMAN**. See *Lagamannus*.

**LAGENA**. L. Lat. In old English law. A measure of ale. *Fleta*, lib. 2, c. 11. Said to consist of six sextaries. *Cowell*.

**LAHMAN**. Sax. [from *lah*, law.] In Saxon law. A law-man, or lawyer, (*jurisconsultus*.) *Spelman*, voc. *Lagamannus*.

**LAHSLIT**, *Lahslite*, *Lagslit*, *Laghslit*, *Laxlite*, *Laslit*. Sax. or Dan. [from *lah* or *lag*, law, and *slit*, a breaking.] In Saxon or Anglo-Danish law. A breach or transgression of law, (*transgressio legis*.) *Spelman*.

Punishment for breaking the law, (*legis violatæ pœna*.) *Id.* *Spelman* calls this a Danish word. In the laws of William the Conqueror, it is written *Laxlite*, and is said to have denoted the Danish common

forfeiture, which was twelve *ores* or one pound sterling. *LL. Gul. Cong.* l. 41, and note.

**LAI**, *Laie*. L. Fr. Law. *Kelham*. Old forms of *ley*, (q. v.)

**LAICUS**, *Laicum*. L. Lat. [from Gr. *λαῖς*, people.] In old English law. Lay, as distinguished from ecclesiastical. *Laicum feodum*; a lay fee. *Magna Charta*, 9 Hen. III. c. 18. *Fleta*, lib. 2, c. 69, § 1. *Laicum tenementum*; a lay tenement. *Mag. Chart.* c. 14.

A layman. *Tradantur omnes schedulæ alicui laico qui omnino literas non cognoscit*; all the escrows shall be delivered to some layman who knows nothing at all of letters. *Fleta*, lib. 5, c. 9, § 13. See *Laity*.

**LAIEL**. L. Fr. Lawful. *Kelham*. See *Leal*.

**LAINE**, *Laisnes*, *Laynes*, *Leignes*, *Leynes*. L. Fr. Wool. *Kelham*.

**LAIRWITE**, *Layrwit*, *Leirwyte*, *Legerwit*. Sax. [from *lagan*, to lie, and *wite*, a fine or mulct.] In Saxon and early English law. A fine for committing adultery and fornication. *Spelman*. *Fleta*, lib. 1, c. 47.

**LAISER**. L. Fr. To let. 3 *Leon*. 134, arg.

**LAISSER**. L. Fr. To transfer. *Kelham*.

To leave. *L. Fr. Dict.*

**LAISSIER**. L. Fr. To prevent; to omit or neglect. *Kelham*.

**LAITY**. [from Gr. *λαῖς*, people.] The lay part of the people, or such as are not comprehended under the denomination of clergy. 1 *Bl. Com.* 396, 376. See *Lay*.

**LAMA**. Lomb. A fish pond. *Spelman*.

**LAMANEUR**. Fr. In French marine law. A pilot. *Ord. Mar.* liv. 4, tit. 3.

**LAMBETH DEGREE**. In English law. A degree conferred by the Archbishop of Canterbury, in prejudice of the universities. 3 *Steph. Com.* 65. 1 *Bl. Com.* 381.

**LANA**. Lat. In the civil law. Wool. See this word construed in *Dig.* 32. 60, 70, 88.

**LANCETA**. L. Lat. In old English law. A kind of agricultural tenant or vassal. *Spelman*.

**LAND**, [Lat. *terra*, *solum*, *ager*, *prædium*, *fundus*; Fr. *terre*.] In the most general sense, comprehends any ground, soil or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes, furzes and heath. *Co. Litt.* 4 a. It le-

gally includes also all houses and other buildings built upon it; or, in still more general terms, it includes not only the face of the earth, but every thing under it or over it. *Id. ibid.* 2 *Bl. Com.* 17, 18. *Shep. Touch.* 90. 1 *Chitt. Gen. Pr.* 179, 180. 1 *Crabb's Real Prop.* 66, 67, § 86. 3 *Kent's Com.* 401. See *Cujus est solum ejus est usque ad cælum.*

In fines, *land* denoted *arable* land, only. *Shep. Touch.* (by Preston,) 13. 1 *Chitt. Gen. Pr.* 179, 180.

In wills, "land" is construed in its largest sense. 1 *Crabb's Real Prop.* 67, § 86. 2 *Powell on Devises*, (by Jarman,) 186. It has sometimes, however, been confined to mean *arable* land. *Cro. Eliz.* 476. See 1 *Jarman on Wills*, 706, 707, (604, 605, Perkins' ed.)

In American law, the common law definition of land has been adopted, with some modifications introduced by statute. 3 *Kent's Com.* 401. 1 *Hilliard's Real Prop.* 51. 2 *Id.* 339. See *Id.* 50. 1 *N. Y. Rev. St.* [387,] 379, § 1. *Id.* [750,] 741, § 10. The word *land* includes not only the soil, but every thing attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences. Bronson, J. 1 *Comstock's R.* 572.

"LANDS," in the plural, is, at common law, a less extensive term of description than "*tenements and hereditaments.*" In American law, however, it is sometimes made by statute to include both the latter terms. *Rev. Stat. Mass.* c. 61, § 32. 1 *N. Y. Rev. St.* [750,] 741, § 10.

LANDA. L. Lat. An open field without wood; a lawnd or lawn. *Cowell. Blount.*

LANDBOC. Sax. [from *land*, and *boc*, a writing.] In Saxon law. A charter or deed by which lands or tenements were given or held. *Spelman. Cowell.* 1 *Reeves' Hist. Eng. Law*, 10. 1 *Spence's Chancery*, 22.

LANDCHEAP. [Sax. *landceap*; from *ceapon*, to buy and sell.] In old English law. An ancient customary fine, paid either in money or cattle, at every alienation of land lying within some manor, or within the liberty of some borough. *Cowell. Blount.*

LANDEA, *Landia*. L. Lat. In old English law. A ditch or trench for conveying water from marshy grounds. *Spelman.*

LANDEGANDMAN. Sax. In old English law. A kind of customary tenant or inferior tenant of a manor. *Spelman.*

LANDGABLE, *Landgavel*. Sax. [from *land*, and *gafel*, a rent.] In old English law. A tax or rent issuing out of land; (*terræ census vel redditus*;) a land tax. *Cowell. Blount.*

A quit rent for the site of a house, or the land whereon it stood; a ground rent. *Domesday. Cowell.*

LANDIMER. [L. Lat. *landimera*; from *land*, and Sax. *gemære*, a boundary.] In old English law. A limit or boundary of land. *Spelman.*

LANDIMER. Sc. [Lat. *agrimensor*.] In old Scotch law. A measurer of land. *Skene de Verb. Sign. voc. Particata.*

LANDIRECTA. L. Lat. In Saxon law. Services and duties laid upon all that held land, including the three obligations called *trinoda necessitas* (q. v.); *quasi* land rights. *Cowell.*

LANDLORD. He of whom lands or tenements are holden. Used as early as 2 *Leon.* 94.

LANDMAN. [L. Lat. *terricola*.] A terre-tenant. *Cowell.*

LANDREEVE. In English law. A person whose business it is to overlook certain parts of a farm or estate. *Wharton's Lex.*

LANDSLAGH. In Swedish law. A body of common law, compiled about the thirteenth century, out of the particular customs of every province; being analogous to the *common law* of England. 1 *Bl. Com.* 66.

LAND-TAX. In English law. A tax upon land which, in its modern shape, has superseded all the former methods of rating either property, or persons in respect of their property, whether by tenths, or fifteenths, subsidies on land, hydages, scutages or talliages. 1 *Bl. Com.* 308. 2 *Steph. Com.* 569. As between landlord and tenant, this tax is, generally considered, a charge upon the former. Properly speaking, however, it is a tax neither on landlord nor tenant, but on the beneficial proprietor as distinguished from the mere tenant at rack-rent. *Id.* 574, 575. See *Wharton's Lex.*

LAND-TENANT. He that actually possesses land, or has it in his manual occupation; a terre-tenant. *Cowell.*

LANDWARD. Sc. In Scotch law. Rural. 7 *Bell's Appeal Cases*, 2.

**LANGEMANNI.** L. Lat. In old English law. Lords of manors, according to Sir Edward Coke's definition, who writes the word *lannemanni*. *Domesday. Co. Litt.* 5 a.

**LANGUIDUS.** L. Lat. (Sick.) In practice. The name given to the return made by a sheriff to a *capias* or *ca. sa.* that the defendant was sick, or sick in prison, (*languidus in prisona.*) 1 *Tidd's Pr.* 308. 2 *Id.* 1028. 3 *Chitt. Gen. Pr.* 249. *Perpetuo languidi*; incurably sick. *Fleta*; lib. 4, c. 5, § 5.

**LANGUOR.** L. Lat. In old English practice. Sickness; a confirmed and lingering sickness, as distinguished from a transient indisposition, (*malum transiens.*) *Glanv.* lib. 1, c. 18, 19. *Bract.* fol. 340, 344 b, 352 b, 357 b. *Fleta*, lib. 6, c. 6, § 19. Skene defines it to be "a vehement sickness of body or of mind." *Reg. Maj.* lib. 1, c. 8. This was a common ground of essoin in the old practice. See *Essoin*. If it continued over a year, it was called *morbus soticus*. *Bract.* fol. 344 b.

**LANO NIGER.** L. Lat. In old English law. A kind of base coin. *Cowell*.

**LANZA.** Span. In Spanish law. Military service. *White's New Recop.* b. 2, tit. 2, c. 2.

A certain service in money, paid by the grandees and nobles to the king every year. *Id.* note.

**LAPIDICINA.** Lat. In the civil law. A stone-quarry. *Dig.* 7. 1. 9. 2.

**LAPILLI.** Lat. In the civil law. Precious stones. *Dig.* 34. 2. 19. 17. Distinguished from gems, (*gemmæ.*) *Id. ibid.*

**LAPSE.** [L. Lat. *lapsus.*] In English ecclesiastical law. A slip or omission; a species of forfeiture, whereby the right of presentation to a church accrues to the ordinary by neglect of the patron to present; to the metropolitan by neglect of the ordinary; and to the king by neglect of the metropolitan. 2 *Bl. Com.* 276. The term in which the title to present by lapse accrues from the one to the other successively is six calendar months, exclusive of the day of the avoidance. *Id. ibid.* 3 *Steph. Com.* 116, 117.

To LAPSE. [from Lat. *lapsus*, fallen.] To fall, slip or sink; to fail of its object; to become void.\* Where the person to whom a legacy is bequeathed, dies before the testator, the legacy is said to be *lapsed*, that is, lost or fallen, and sinks into the residuum of the testator's personal estate.

2 *Bl. Com.* 513. In some of the United States, legacies do not lapse if any issue of the legatee be living when the testator dies. 4 *Kent's Com.* 541, note. And a similar rule has been recently established in England in cases where a bequest is to a child or issue of the testator. *Stat. 7 Will. IV.* and 1 *Vict. c.* 26, s. 33. 2 *Steph. Com.* 249.

**LAPSE PATENT.** In American land law. A patent obtained after another which has become null or forfeited for non-payment of quit rents or want of cultivation. 1 *Wash. (Va.) R.* [38,] 50.

**LAPSED DEVISE.** A devise which fails, or takes no effect, in consequence of the death of the devisee before the testator; the subject matter of it being considered as not disposed of by the will. 1 *Steph. Com.* 559. 4 *Kent's Com.* 541. An exception to this rule has lately been established in England, in favor of the issue of a devisee. 1 *Steph. Com.* 559, 560.

**LAPSED LEGACY.** A legacy which takes no effect, or becomes void, in consequence of the death of the legatee before the testator. See *Lapse*.

**LARCENY.** [from L. Fr. *larcyn*, contr. of *larrecin*, from L. Lat. *latrocinium*, qq. v.] In criminal law. The felonious taking and carrying away of the personal goods of another. 4 *Bl. Com.* 229.—The unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same. 4 *Steph. Com.* 152.—The felonious taking the property of another, without his consent and against his will, with intent to convert it to the use of the taker. Grose, J. 2 *Leach*, 1089. These are the definitions of simple larceny, otherwise called *theft*. 4 *Bl. Com.* 229. See 2 *East's P. C.* 552, 553. 2 *Russell on Crimes*, 1—130. *United States Digest*, Larceny. *Lewis' U. S. Crim. Law*, 438—478. *Wharton's Am. Crim. Law*, § 1750. *Id.* §§ 1705—1750. In a late English case, it was said by Parke, B. that "the definitions of larceny are none of them complete." 2 *Car. & Kir.* 945. See *Simple larceny*, *Mixed larceny*.

**LARCYN, Larcin.** L. Fr. Larceny. *Britt.* cc. 15, 24. *LL. Gul. Cong.* l. 4.

**LARECIN.** L. Fr. A thing stolen. *Si larcin est troved*; if a thing stolen is found. *LL. Gul. Cong.* l. 31.

**LARGE.** L. Fr. Broad; the opposite of *estreyte*, strait or strict. *Pures et larges.* *Britt.* c. 34.

Unconfined. *Mettre à large*; to set at liberty.

**LARGURE**, *Largeur*. L. Fr. [from *large*, q. v.] Breadth. *Solonc la largure, et la longure*; according to the breadth and length. *Britt.* c. 63. *Id.* c. 103.

**LARGUS**. Lat. Large; broad; comprehensive. *Item poterit esse warrantizatio larga et stricta*; larga, *ut si dicatur, Ego et hæredes mei warrantizabimus tali et hæredibus suis*; largior, *ut si dicat, tali et hæredibus suis et assignatis et hæredibus assignatorum*. *Item largissima, ut si dicat tali et hæredibus suis et assignatis, et eorum hæredibus, et assignatis assignatorum et hæredibus eorum*; also, warranty may be broad and strict; broad, as if it be said, "I, and my heirs will warrant to such a one and his heirs;" broader, as if he say, "to such a one and his heirs and assigns, and the heirs of his assigns." Also, broadest, as if he say, "to such a one and his heirs and assigns and their heirs, and the assigns of their assigns and their heirs." *Bract.* fol. 37 b.

**LARON**, *Laroun, Larun*. L. Fr. A thief. *Britt.* c. 15. *Stat. Westm.* 1, c. 3. *LL. Gul. Cong.* l. 5. *Petits larons*; petty thieves. *Britt.* c. 29.

**LAS PARTIDAS**. Span. In Spanish law. A code of laws compiled by Alphonso X. about A. D. 1250, in which all the provincial customs were collected into one uniform law. 1 *Bl. Com.* 66. It is otherwise entitled *Las Siete Partidas*, (the seven parts,) from the seven parts into which it is divided. It was compiled under the direction of Alphonso, by four Spanish juriconsults, whose names have not been preserved, and who drew its materials from the ancient customary law, the canonical laws of Spain, but principally from the Roman civil law, which is sometimes translated literally. It was published in 1263, but was not promulgated or generally adopted as the law of Spain until the reign of Alphonso XI. in 1348. This code has always been regarded as authority in Spanish America, and such of its provisions as are applicable remain in force in the states of Louisiana and Texas. An English translation by Moreau [Lislet] and Carleton was published at New Orleans in 1820. A particular description of the *Partidas* is given in *Schmidt's Civil Law of Spain and Mexico*, Introd. 69—74.

**LASIER**. L. Fr. To omit. *Kelham*.

**LAST**. [L. Lat. *lustus, lestus*.] In English law. A burden; a weight or measure

of various commodities, as of pitch, hides, fish, corn, wool, leather, &c. *Cowell*.

A court held in the marshes of East Kent, by twenty-four jurats, wherein they made orders, laid and levied taxes, &c. for the preservation of the marshes. *Id.*

**LAST HEIR**. [Lat. *ultimus hæres*.] In English law. He to whom lands come by escheat for want of lawful heirs; that is, in some cases, the lord of whom the lands were held; in others, the sovereign. *Cowell*.

**LAST WILL**. [Lat. *ultima voluntas*; L. Fr. *darrein volonte*; Gr. *τελευταία βουλήσις*.] This term, according to Lord Coke, is most commonly used where lands and tenements are devised, and *testament* where it concerns chattels. *Co. Litt.* 111 a. Both terms, however, are now generally employed in drawing a will either of lands or chattels, as descriptive of the instrument,—("my last will and testament;") the general word of description being "will," (q. v.)

**LASTAGE**. In old English law. A custom exacted in some fairs and markets to carry things where one will. *Rastal Expos. Verb.* cited in *Spelman* and *Cowell*.

The burthen of a ship, (*onus quod navi imponitur*.) *Spelman*. According to *Cowell*, the ballast of a ship.

A kind of tax or tribute. *Spelman*. A custom paid for wares sold by the last. *Cowell*. See *Hale de Jur. Mar.* pars 2, c. 6. A duty of one penny for every quartern of corn, that is, ten pence for every last. 1 *H. Bl.* 207, note.

**LASTUS**, *Lestus*. L. Lat. In old English law. A last. A weight or measure of hides, wool and other articles. *Fleta*, lib. 2, c. 12, §§ 2, 3.

**LATA CULPA**. Lat. In the law of bailment. Gross fault or neglect; extreme negligence or carelessness, (*nimia negligentia*.) *Dig.* 50. 16. 213. 2. *Lata culpa dolo æquiparatur*. Gross negligence is equivalent to fraud. See *Culpa*.

**LATENS**. Lat. [from *latere*, to lie hid.] Latent; hidden; not apparent. See *Ambiguitas*.

"**LATELY**." This word has been held to have "a very large retrospect, as we say 'lately deceased' of one dead ten or twenty years." *Per cur.* 2 *Show.* 294.

**LATENT**. [from Lat. *latens*.] Hidden; concealed; that does not appear upon the face of a thing. See *Ambiguity*.

**LATERA**. L. Lat. In old records. Sidesmen; companions; assistants. *Cowell*.

**LATERARE.** L. Lat. [from *latus*, a side.] In old English law. To lie sideways; literally, to side; the opposite of *capitare*, to head or abut. *Cowell*. See *Capitare*.

**LATHE, Leth.** [Sax. *læthe*; L. Lat. *læstum*, *leda*.] In English law. A larger division of a county, intermediate between the shire and hundred, containing sometimes three or more hundreds. *Spelman*, voc. *Læstum*. *Blount*. 1 *Bl. Com.* 116. It seems to be peculiar to the county of Kent. *Id.* See 12 *East*, 244.

**LATHE-REEVE, Lathreve, Leidgreve.** Sax. An officer under the Saxon government, who had authority over a lathe. *Cowell*. 1 *Bl. Com.* 116.

**LATIFUNDIUM.** Lat. [from *latus*, broad, and *fundus*, land?] In the Roman law. An estate of large extent, made up of an aggregation of small estates. Its nature is shown by its Greek name, *σύνκτησις*. *Dig.* 34. 4. 30. 1. These *latifundia* were acquired by individuals during the later periods of the empire, and are considered to have contributed to the ruin both of Italy and Spain. See *Schmidt's Civil Law*, Introd. 19.

**LATIMER.** A word used by Lord Coke in the sense of an interpreter. 2 *Inst.* 515. Supposed to be a corruption of the Fr. *latinier*, or *latiner*. *Cowell*. *Blount*.

**LATIN.** An important language in the law; being the language not only of the civil and canon law, but of the early European codes, of much of the ancient common law of England and Scotland, and of a large proportion of the public, civil and maritime law of later times. The Latin of the Pandects is, in Gibbon's words, "not unworthy of the silver age" of Roman literature; but the Code and Institutes exhibit the language in the periods of its decline and decay, and the Latin of most of the subsequent law belongs to that peculiar and technical dialect known as *low Latin*, or *law Latin*, (q. v.) The value of the Latin has always consisted in its peculiar expressiveness as a language of law terms, in its superior conciseness which has made it the appropriate language of law maxims, and in its almost unlimited capacity of condensation by means of abbreviations and contractions, many of which are retained in popular use at the present day.

**LATINI.** Lat. In the civil law. An inferior kind of freedmen, who did not enjoy the full privilege of Roman citizens, but had

only what was called the lesser liberty, (*minorem libertatem consequantur*.) They were introduced by the *Lex Junia Norbana*, and abolished by Justinian. *Cod.* 7. 6. *Inst.* 1. 5. 3. *Id.* 3. 8. 4. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 5, §§ 107, 109.

**LATITARE.** Lat. [freq. of *latere*, to lie hid.] In the civil law. To hide; to secrete one's self; to keep out of the way of creditors; to conceal one's self with a view of defrauding creditors. *Dig.* 42. 4. 7. 4—7. To conceal one's self for some length of time, (*cum tractu aliquo*.) *Id.* 42. 4. 7. 8. See *Id.* 42. 5. 36.

In old English practice. To keep out of the way, to avoid being served with process; not to appear when summoned. *Bract.* fol. 364 b.

In old criminal law. To lurk by a roadside. *Fleta*, lib. 1, c. 24, § 8.

**LATITAT.** L. Lat. (He lurks or lies hid.) In old English practice. A writ which issued in personal actions, on the return of *non est inventus* to a bill of Middlesex; so called from the emphatic word in its recital, in which it was "testified that the defendant *lurks* (*latitat*) and wanders about" in the county. 3 *Bl. Com.* 286. Abolished by statute 2 Will. IV. c. 39.

**LATITATIO.** L. Lat. [from *latitare*, q. v.] In the civil law and old English practice. A lying hid; lurking, or concealment of the person. *Dig.* 42. 4. 7. 5. *Bract.* fol. 126.

**LATRO.** Lat. In the civil and old English law. A robber. *Dig.* 50. 16. 118. *Fleta*, lib. 1, c. 38, § 1. A thief. *Id.* *ibid.*

**LATROCINIUM.** Lat. [from *latro*, a robber.] In old English law. Larceny or theft. *Reg. Orig.* 268 b, 269. See *Larceny*.

A thing stolen. *Fleta*, lib. 1, c. 38, § 7.

The liberty of *infangenthef*, or privilege of judging and executing thieves. *Cowell*. *Spelman*, voc. *Latro*.

**LATURE.** L. Fr. Breadth. *Kelham*.

**LATUS.** Lat. A side; the side.

**LAUDARE.** Lat. In the civil law. To name; to cite or quote; to show one's title or authority. *Calv. Lex. A. Gell. Noct. Att.* lib. 2, c. 6.

In feudal law. To determine or pass upon judicially. *Feud. Lib.* 1, tit. 22. *Laudamentum*; the finding or award of a jury. *Id.* tit. 21. 2 *Bl. Com.* 285.

**LAUDATIO.** Lat. [from *laudare*, to praise.] In the civil law. A praising or commending; a speaking in one's favor.

Testimony adduced in favor of the character of an accused person. *Hallifax, Anal.* b. 3, c. 13, num. 28.

**LAUDEMIIUM, *Laudimium*.** Lat. In the civil law. A sum paid by a new *emphyteuta*, (q. v.) who acquires the *emphyteusis*, not as heir, but as a singular successor, whether by gift, devise, exchange or sale. It was a sum equal to the fiftieth part of the purchase money, paid to the *dominus* or proprietor, for his acceptance of the new *emphyteuta*. 1 *Mackeld. Civ. Law*, 359, § 326. Called, in old English law, acknowledgment-money, (q. v.) *Cowell*.

**LAUDUM.** L. Lat. In old Scotch law. Sentence or judgment; dome or doom. 1 *Pitc. Cr. Trials*, part 2, p. 8.

**LAUS DEO.** Lat. Praise be to God. An old heading to bills of exchange. *West's Symboleog.* part 1, lib. 2, sect. 660.

**LAUGHLESMAN.** Sax. In old English law. An outlaw. *Bract.* fol. 125.

**LAVOR NUEVA.** Span. In Spanish law. A new work. *Las Partidas*, part 3, tit. 32, l. 1.

**LAW.** [Lat. *lex, jus*; Sax. *lag, lagh, lah*; L. Fr. *ley, loy*.] In the most general sense,—a rule of action prescribed by a superior. 1 *Bl. Com.* 38, 39. A rule of human action or conduct. *Id. ibid.* A system of such rules.\*

In a stricter sense,—a rule of civil conduct, prescribed by the supreme power in a state. 1 *Steph. Com.* 25. 1 *Bl. Com.* 44. This is the definition of municipal or civil law. Blackstone's definition, in full, is, "a rule of civil conduct, prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." The last clause has been made the subject of considerable criticism, and is omitted by Mr. Serjeant Stephen in his *New Commentaries*, (*ub. sup.*) It seems to have been taken from the "*jubens honesta, prohibens contraria*" of Cicero's definition of *lex*, adopted by Bracton, of which, indeed, it is very nearly a literal translation. *Bract.* fol. 2. 1 *Bl. Com.* 122.—A science, or system of principles or rules, defining the rights and duties of persons, and prescribing remedies for their violation or non-observance.\*

In the strictest sense,—a statute; a rule prescribed by the legislative power. "The laws of a state," observes Mr. Justice Story, "are more usually understood to mean the rules and enactments promulgated by the

legislative authority thereof, or long-established local customs having the force of laws." 10 *Peters' R.* 18. Hence he argues, "in the ordinary use of language, it will hardly be contended that the decisions of courts constitute laws." *Id. ibid.* In this, he follows Sir Matthew Hale, who observes—"It is true, the decisions of courts of justice, though, by virtue of the laws of this realm, they do bind as a law between the parties thereto, as to the particular case in question, till reversed by error or attain, yet they do not make a law, properly so called, for that only the king and parliament can do." *Hist. Com. Law*, 90, (Runnington's ed. 1820.) But though it be incorrect to speak of a judicial decision as "a law," or to call any aggregate of such decisions, "laws," in the plural, yet the decision of a court may in many instances be pronounced to be "law," or "the law of the state or the land," and such expressions are in conformity with daily professional usage.

\* \* In the ordinary definitions of this word, sufficient attention does not seem to have been paid to the circumstance of its being used without or with an *article* prefixed; and to the nature of such article, as whether *definite* or *indefinite*.

*Law*, without an article, properly implies a *science* or *system* of principles or rules of human conduct, answering to the Latin *jus*; as when it is spoken of as a subject of study or practice. In this sense, it includes the decisions of courts of justice, as well as acts of the legislature. The judgment of a competent court, until reversed or otherwise superseded, is *law*, as much as any statute. Indeed, it may happen that a statute may be passed in violation of *law*, that is, of the fundamental *law* or constitution of a state; and it is the prerogative of courts in such cases to declare it void, or, in other words, to declare it not to be *law*. See 3 *Kernan's R.* 378, 392—395, Comstock, J. *Id.* 445, Selden, J. See *Law of the land*.

A *law*, (answering to the Latin *lex*,) undoubtedly imports an act of the legislature; and the term is quite inapplicable to a decision of a court of justice as explained above.

The *law* is a term often used in the same sense with *law*, as importing a science or system of principles or rules, though in a somewhat narrower sense, as expressive of a system of principles and rules adopted

by a state for the government of its citizens or subjects. The force of this term is well illustrated by its use in many old maxims, such as—"The law" favoureth right, "The law" favoureth things for the common weal, &c. That it does not necessarily import an act of the legislature, see *Law of the land*.

Law [the law] respecteth the bonds of nature. *Wingate's Max.* 268, max. 78. *Finch's Law*, b. 1, ch. 3, num. 29.

Law [the law] favoureth possession, where the right is equal. *Wing. Max.* 375, max. 98. *Finch's Law*, b. 1, ch. 3, num. 36.

Law respecteth matter of substance more than matter of circumstance. *Wing. Max.* 382, max. 101. *Finch's Law*, b. 1, ch. 3, num. 39.

Law respecteth possibility of things. *Wing. Max.* 403, max. 104. *Finch's Law*, b. 1, ch. 3, num. 40.

Law favoureth mutual recompence. *Wing. Max.* 411, max. 108. *Finch's Law*, b. 1, ch. 3, n. 42.

Law [the law] favoureth charity. *Wing. Max.* 497, max. 135.

Law favoureth justice and right. *Wing. Max.* 502, max. 141.

Law favoureth common right. *Wing. Max.* 547, max. 144.

Law hateth wrong. *Wing. Max.* 563, max. 146. *Finch's Law*, b. 1, ch. 3, n. 62.

Law of itself prejudiceth no man. *Wing. Max.* 575, max. 148. *Finch's Law*, b. 1, ch. 3, n. 63.

Law favoureth truth, faith and certainty. *Wing. Max.* 604, max. 154.

Law disfavoureth impossibilities. *Wing. Max.* 606, max. 155.

Law disfavoureth improbabilities. *Wing. Max.* 620, max. 161.

Law favoureth diligence, and therefore hateth folly and negligence. *Wing. Max.* 665, max. 172. *Finch's Law*, b. 1, ch. 3, n. 70.

Law favoureth speeding of men's causes. *Wing. Max.* 673, max. 175.

Law hateth delays. *Wing. Max.* 674, max. 176. *Finch's Law*, b. 1, ch. 3, n. 71.

Law [the law] construeth things with equity and moderation. *Wing. Max.* 685, max. 183. *Finch's Law*, b. 1, ch. 3, n. 74.

Law construeth things according to common possibility or intendment. *Wing. Max.* 705, max. 189.

Law always construeth things to the best. *Wing. Max.* 720, max. 193.

Law construeth every act to be lawful,

when it standeth indifferent whether it should be lawful or not. *Wing. Max.* 722, max. 194. *Finch's Law*, b. 1, ch. 3, n. 76.

Law [the law] favoureth things for the commonwealth [common weal.] *Wing. Max.* 729, max. 197. *Finch's Law*, b. 1, ch. 3, n. 53.

Law favoureth public commerce. *Wing. Max.* 738, max. 198.

Law favoureth honour and order. *Wing. Max.* 739, max. 199.

Law favoureth public quiet. *Wing. Max.* 742, max. 200. *Finch's Law*, b. 1, ch. 3, n. 54.

Law hateth new inventions and innovations. *Wing. Max.* 756, max. 204.

Law favoureth life, liberty and dower. "Is it not a common principle that the law favoureth three things: life, liberty and dower? And what is the reason of this favour? This, because our law is grounded upon the law of nature. And these three things do flow from the law of nature,—preservation of life natural; liberty, which every beast or bird seeketh, and affecteth naturally; the society of man and wife, whereof dower is the reward natural." *Bacon's Arg. Case of the Postnati of Scotland; Works*, iv. 345.

LAW. [Lat. *lex*; L. Fr. *ley*.] In old English law. An oath; particularly that kind of oath which was taken with compurgators, in the proceeding called "*making law*," or less correctly, *wager of law*. See *Compurgator*, *To make law*, *Law-worth*.

A freeman's privilege of being sworn in court as a juror or witness. See *Frank law*, *Libera lex*.

LAW OF ARMS. [Lat. *lex armorum*, *jus militare*.] That law which gives precepts and rules concerning war; how to make and observe leagues and truce, to punish offenders in the camp, and such like. *Cowell. Blount*. Now more commonly called the *law of war*, (q. v.)

LAW OF THE LAND. [L. Lat. *lex terræ*.] Due process of law. *Magna Charta*, c. 29. 2 *Inst.* 50. 2 *Kent's Com.* 13. 1 *Curtis' R.* 311.—A trial by due course and process of law, or according to the course of the common law. *Coulter, J. 6 Penn. St. (Barr's) R.* 86, 91. *Bronson, J. 4 Hill's (N. Y.) R.* 140, 146. The words "law of the land" do not necessarily or exclusively signify an act of the legislature. *Ruffin, C. J. 4 Devereux's R.* 15. *Comstock, J. 3 Kernan's R.* 393.

The general and public law, operating

equally upon every member of the community. 2 *Yerger's* (Tenn.) *R.* 500, 554. 10 *Id.* 71. 2 *Kent's Com.* 13, note.

In American law, this has become a common phrase in state constitutions and bills of rights. Its original is the "*lex terræ*" of Magna Charta, which Lord Coke has construed to mean, "due process of law;" and this construction seems to have been adopted in the Constitution of the United States, in which the latter phrase is used. *Const. U. S.* Amendments, Art. 5. See *Lex terræ*.

LAW OF MARQUE. See *Marque*, *Letters of Marque*.

LAW OF MERCHANTS. See *Law-Merchant*.

LAW OF NATIONS. [Lat. *jus gentium*.] A system of rules and principles established among nations, and intended for the regulation of their mutual intercourse; otherwise called *international law*, (q. v.)—A code of public instruction, which defines the rights and prescribes the duties of nations in their intercourse with each other. 1 *Kent's Com.* 1. It is founded for the most part on usage, consent and agreement, but in an important degree, also, on the principles of natural law. *Id.* 2.

LAW OF NATURE. [Lat. *jus naturæ*, *jus naturale*.] A rule of conduct arising out of the natural relations of human beings, established by the Creator, and existing prior to any positive precept. *Webster*. Otherwise termed *natural law*. *Tayl. Civ. Law*, 99. The foundation of this law is placed by the best writers in the will of God, discovered by right reason and aided by divine revelation; and its principles, when applicable, apply with equal obligation to individuals and to nations. 1 *Kent's Com.* 2, note. *Id.* 4, note.

LAW OF THE STAPLE. In old English law. The same with the law-merchant, (q. v.) *Blount*. But see *Jus stapulæ*.

LAW OF WAR. See *Jus belli*.

LAW-BORGH. Sc. [from *law*, and Sax. *borh*, a pledge.] In old Scotch law. A pledge or surety given for a party's appearance in court. *Skene de Verb. Sign. voc. Iter*, (p. 79.)

LAW BURROWS. In Scotch law. Security for the peaceable behaviour of a party; security to keep the peace. 1 *Robertson's Charles V.* Appendix, No. xvi. Properly, a process for obtaining such security. 1 *Forbes' Inst.* part 2, p. 198. *Bell's Dict.*

LAW DAY or LAGE DAY. In old English law. A day of open court; commonly used for the more solemn courts of a county or hundred. *Cowell*.

The court leet, or view of frankpledge. *Id.* *Blount*.

In modern practice. The day limited in a mortgage or deed of trust, for the payment of the debt secured. 24 *Alabama R.* 149. 10 *Connecticut R.* 280.

LAW FRENCH. The Norman French language, introduced into England by William the Conqueror, and which, for several centuries, was, in an emphatic sense, the language of the English law, being that in which the proceedings of the courts and of parliament were carried on, and in which many of the ancient statutes, reports, abridgments and treatises were written and printed. It is called by Blackstone "a barbarous dialect," and the later specimens of it fully warrant the appellation, but at the time of its introduction it was, as has been observed, the best form of the language spoken in Normandy.

The pleadings in actions, including the arguments of counsel and the decisions of the courts, were conducted and pronounced exclusively in this language, down to the thirty-sixth year of Edward III. when the English was substituted in its place. 3 *Bl. Com.* 318. The cases and decisions, however, continued to be reported in French to the close of the seventeenth century, the first reports published in English being those of Style, in 1658. The statutes began to be written in French in the reign of Henry III. and in some of the subsequent reigns are exclusively in this language. The English was substituted in the reign of Henry VII. Of the law treatises in French, the most important are those of the Mirror and Britton, and the later work of Littleton. A good sketch of the history of the language may be found in an article in the *North American Review* for October, 1840.

The frequent barbarisms observable in this language, especially in its later periods, arose from the corruptions to which it was inevitably exposed from its intermixture with English; which, after it had ceased to be spoken, increased to such a degree as to produce a sort of hybrid dialect, many amusing specimens of which may be found in the books. Even the purer portions of it appear to have been in a state of continual fluctuation, no uniform standard even of

orthography being regarded. Hence we find the ordinary word *ley* (law,) occurring in the several forms of *lay*, *lee*, *leie* and *ly*; and the still more common word *lour*, (their) taking the forms of *leour*, *ler*, *lirr*, *loar*, *lor*, *lur*, *lure* and *lurr*. The old parliament rolls, from which Kelliam in his Norman Dictionary has extracted copiously, furnish numerous examples of this kind. As a further evidence of the singular deterioration which this language underwent, it may be mentioned that in the small volume of Britton, of 287 folios, or 578 pages 18mo. the text of 650 passages was considered by Wingate, in the year 1640, to be so corrupt as to justify a different reading.

**LAW LATIN.** A technical kind of Latin, in which the pleadings and proceedings of the English courts were enrolled and recorded from a very early period to the reign of George II.; being also, during a great part of the same period, the language of original and judicial writs, of royal charters and letters patent, of private charter or deeds, and many other instruments public and private. See, in particular, the *Registrum Brevium*, and West's *Symbolography*, *passim*. See *Latin*, and the words in this dictionary designated by the abbreviation "L. Lat." It still continues to be used in England and Scotland, as the language of some public instruments, such as charters, pardons, &c.

\* \* \* The principal peculiarities of this language consist first, in its construction, which is adapted so closely to the English idiom as to answer to it sometimes word for word; and, secondly, in the use of numerous words "not allowed by grammarians nor having any countenance of Latin," but framed from the English by merely adding a Latin termination, as *murdrum* from murder, *gardinum* from garden, and the verbs *murdrare*, to murder, *triare*, to try, and the like. Hence it has frequently been looked upon as of modern origin, and in Blackstone's words, "to be totally fabricated at home." "Whereas, in reality," as the same writer observes, "it is a very universal dialect, spread throughout all Europe at the irruption of the northern nations, and particularly accommodated and moulded to answer all the purposes of the lawyers with a peculiar exactness and precision." 3 *Bl. Com.* 419. It is, indeed, only a variety of what is generally termed *Low Latin*, or the Latin of the middle

ages, (*media et infirma Latinitas*), in which all the codes of the early nations of Europe, as the Franks, Burgundians, Alemanni, and others appear to have been written. At this remote period, then, the practice of framing for legal purposes new words from the vernacular, with Latin terminations, may be considered as having originated. The words themselves, though now generally regarded as unmitigated barbarisms, were as much the result of necessity as of ignorance, being intended to express certain necessary ideas for which no appropriate Latin words in many cases existed. Of this class are the words *faderfium*, *garathinx*, *hrevawuntum*, *lidscartum* and many others, which in point of rudeness exceed any in the English books.

On the adoption of the Latin in England, as the record language of the law, a still greater necessity of framing new or modern Latin words was found to exist. The language had to be closely adapted to the various exigencies of modern life, and to be made to express many ideas and subjects which previously had no existence whatever. The pleadings in actions, particularly, contained constant references to articles of dress, of food, of household furniture, and other things which it was necessary to mention by name, but for which no genuine Latin could possibly be found. In such cases, the original system of adding a Latin termination to the vernacular word was, to some extent, pursued. Hence it was allowed to use *velvetum* for *velvet*, and the like. 10 *Co.* 133 b. In many cases, however, the practice was introduced of describing the article or other subject by what was technically termed an "*Anglicè*," or "*vocat'*:" that is, by first using some Latin word descriptive of the class to which it belonged, and then naming the particular English word for it, preceded by the word *Anglicè* (in English,) or *vocat'*, (called,) thus: "*operimentum, Anglicè, a rug*," "*decem velamina, Anglicè, coifs*," "*instrumentum, vocat' a plate for a jack*." 10 *Co.* 130 a, 133 b. *Styles*, 125. Numerous examples of this kind occur in the older reports.

In point of construction, or the arrangement of words in sentences, this Law Latin was, with a view to greater precision, closely assimilated to the English idiom. Hence such phrases as "*convenit, promisit et agreavit ad et cum*," (covenanted, promised and agreed to, and with;) "*de tempore in*

*tempus et ad omnia tempora*," (from time to time and at all times.) With all its rudeness and singularity, however, it was always considered as fundamentally Latin, and governed essentially by the ordinary rules of grammar; and that it was not viewed by the courts as *necessarily*, even inelegant, is shown in the remark of Lord Holt, that "what is good Latin in Cicero is good Latin in law." 2 *Ld. Raym.* 904, 907.

**LAW-MERCHANT.** [Lat. *lex mercatoria*.] The general body of European usages in matters relative to commerce. 1 *Steph. Com.* 54. Otherwise termed commercial law. Blackstone calls it the *custom of merchants*, and ranks it under the head of the particular customs of England, which go to make up the great body of the common law. 1 *Bl. Com.* 75. Mr. Stephen, however, very properly remarks that, as its character is not local, nor its obligation confined to a particular district, it cannot with propriety be considered as a *custom*, in the technical sense in which Blackstone uses that word. 1 *Steph. Com.* 54. It is a law, indeed, which does not rest essentially for its character and authority on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established, to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world. 3 *Kent's Com.* 2.

**LAW-WORTH.** A word occurring in a charter granted by William the Conqueror to the city of London. "And I grant you, that I will that you be all your *law-worth* that ye were in Edwardis dayes the king," &c. *Blount*, voc. *Portgreve*. The meaning probably is, privilege in regard to law, or the privileges of a *legalis homo*, or lawful man; or the word may have an affinity with the *othsworth* (q. v.) of Bracton.

**LAWE, Law.** In old English law. A hill. *Co. Litt.* 4 b.

**LAWFUL.** [L. Lat. *legalis*; Lat. *licitus*, *legitimus*.] Authorized or permitted by law; conformable to law; as a lawful act or proceeding.

Having the qualities or qualifications prescribed by law.

"**LAWFUL MONEY OF THE UNITED STATES**," is lawful money of any state or territory. 1 *Hempstead's R.* 236.

**LAWING OF DOGS.** In forest law.

The cutting out the ball of the forefeet of dogs, or cutting off three claws of the forefoot. *Chart. de Forest.* c. 6. See *Expediate*.

**LAWNDE, Lownde.** In old English law. A plain between woods. *Co. Litt.* 5 b.

**TO LAY.** In pleading. To allege or state. To *lay the venue* in a declaration, is to state or name a particular county in the margin and body of the declaration, as the county in which the plaintiff proposes that the trial shall take place. See *Venue*. This is sometimes termed *laying the action*. 3 *Steph. Com.* 574. To *lay damages*, is to state at the conclusion of the declaration the amount of damages claimed in the action. See *Damages*.

**LAY.** L. Fr. Lay; not clerical or ecclesiastical. *Lay fee.* *Britt.* c. 96. *Lay home*; a layman. *Id. ibid.*

A layman. *A tous lays*; to all laymen. *Id.* c. 16. *Clers ou lays*; clerks or laymen. *Id.* c. 28. *Les layes.* *Kelham*. See *Lays gens*.

**LAY.** L. Fr. and Eng. [Lat. *laicus*, q. v.] Not clerical or ecclesiastical; relating or belonging to the *people* (Gr. λαός,) as distinguished from the clergy. See *infra*.

**LAY CORPORATION.** A corporation composed of laymen, as distinguished from ecclesiastical persons; or established for temporal, as distinguished from spiritual purposes.\* Formerly called a *temporal* corporation. *Cowell*, voc. *Corporation*. See *Corporation*.

**LAY DAYS.** In the law of shipping. Days allowed in charter parties, for loading and unloading the cargo. 3 *Kent's Com.* 202, 203.

**LAY FEE.** L. Fr. and Eng. [L. Lat. *feodum laicum*.] In English law. A fee held of a lay lord, or by lay tenure, that is, the ordinary feudal tenure, as distinguished from the ecclesiastical tenure of frankalmoign.\* *Britt.* c. 26. 2 *Bl. Com.* 101.

**LAY IMPROPRIATOR.** In English ecclesiastical law. A lay person holding a spiritual appropriation. 3 *Steph. Com.* 72. See *Appropriation*.

**LAYS GENTS, Lays Gens, Lais Gens.** L. Fr. In old English law. Lay people; the common people or laity. *Les lays gents que ne sont apprises en la ley*; the common people who are not learned in the law. *Litt.* sect. 331. *Ceo serra grand*

*p'il à mett' cest matt' en bouche del lais gens*; it would be a great hazard (very dangerous) to put this matter in the mouth of lay people. *Yearb. M.* 9 Hen. VI. 37. See *Gents*.

A jury; jurors. *Yearb. M.* 11 Hen. VI. 2, 4.

LE, *Lec.* L. Fr. Large; broad. *Kelham*.

LE. L. Fr. The. Used anciently in the composition of names. *Henricus le Smyth*; Henry the Smyth. *Reg. Orig.* 96 b. *Philippus le Riche*; Philip the Rich. *Bract.* fol. 166. *Henricus le Turner*; Henry the Turner. *Id.* fol. 199. *Johannes le Botiler*; John the Butler. *Yearb. H.* 3 Edw. III. 10.

LE, *Lie*, is used in old Scotch records, in the same manner as the Lat *vocat'* in old English records. *Cum dict' pessimo veneno, le poysone.* 1 *Pitc. Cr. Trials*, part 2, p. 202. *Cum magno exercitu le buschement*; with a great force called an ambushment. *Id.* 329. *Cum uno mangonale lie gunne*; with an engine called a gun. *Id. ibid.*

LE GUIDON, (or LE GUIDON DE LA MER.) The title of a celebrated French treatise on the law of insurance, being the earliest work extant on that subject. It was prepared for the use of the merchants of Rouen at least as early as the sixteenth century, but its author's name has not been preserved. It was published by Cleirac in 1671, in his collection entitled *Les Us et Coutumes de la Mer.* 3 *Ken's Com.* 346. 1 *Duer on Ins.* Introd. Disc. Lect. ii.

LE ROY (or LA REINE) LE VEUT. L. Fr. The king (or queen) wills it. The form of the royal assent to public bills in parliament. 1 *Bl. Com.* 184. *Le roy le voet.* *Rot. Parl.* 4 Hen. IV.

LE ROY (or LA REINE) S'AVISERA. L. Fr. The king (or queen) will advise upon it. The form of words used to express the refusal of the royal assent to public bills in parliament. 1 *Bl. Com.* 184. This is supposed to correspond to the judicial phrase *curia advisari vult*, (q. v.) 1 *Chitt. Bl. Com. ibid.* note.

LE ROY (or LA REINE) REMERCIE SES LOYAL SUJETS, ACCEPTE LEUR BENEVOLENCE, ET AUSSI LE VEUT. L. Fr. The king (or queen) thanks his (or her) loyal subjects, accepts their benevolence, and wills it to be so. The form of the royal assent to a bill of supply. 1 *Bl. Com.* 184.

LE ROY VOET. L. Fr. The king wills. The initial words of the royal answers to the petitions of the commons in parliament. *Le roy voet que de cy en avant, &c.* *Hale's Hist. Com. Law*, 51.

LEA, *Ley*. In old English law. A pasture. *Co. Litt.* 4 a.

To LEAD A USE. In old conveyancing. To direct beforehand the particular use to which a conveyance is to operate.\* Deeds to lead uses were common incidents to fines and recoveries, where the latter were intended to operate to certain uses, being, in other words, deeds made previous to the fine or recovery, directing its operation to the particular uses. 1 *Steph. Com.* 529, 530.

To LEAD IN A CAUSE. In English practice. A term applied, at trials at nisi prius, to the counsel (hence called *leading* counsel or *leader*,) who directs the management of a cause, as distinguished from the junior counsel, who only assists under his direction. *Holthouse*.

LEADING CASE. In practice. A reported case in which the decision of the court is considered as settling or determining the law upon the point or points involved, and which is looked upon and followed as a guide for subsequent decisions.

LEADING COUNSEL. See *To lead in a cause*.

LEADING QUESTION. In practice. A question put or framed in such a form as to suggest the answer sought to be obtained by the person interrogating. *Holthouse*. As, "Did not you see this?" or, "Did not you hear that?" 3 *Bl. Com.* 449. 3 *Chitt. Gen. Pr.* 892, *et seq.* *Best on Evid.* 478, § 436.—A question which directly suggests the answer desired, or which embodies a material fact, and admits of a simple negative or affirmative. 26 *Mississippi R.* 157.

LEAL. L. Fr. [from *ley*, law.] In old English law. Lawful. *Le don fuit bon et leal*; the gift was good and lawful. *Britt.* c. 51. *Leal matrimoine.* *Id.* c. 43.

Loyal; liege; a liege. *A tous ses feals et ses leaus*; to all his faithful subjects and his lieges. *Britt.* fol. 1.

LEALMENT, *Leaument*. L. Fr. Lawfully. *Britt.* cc. 29, 58.

LEALTE. L. Fr. Legality; the condition of a *legalis homo*, or lawful man. *LL. Gul. Conq.* l. 16.

LEARNING. [L. Fr. *erudicion*.] Doc-

trine. "It is a common learning." 1 *Leon.* 77.

LEAS. L. Fr. A lease. *Stat. Glocest.* c. 4.

LEASE. [L. Fr. *leas*, *lees*, *leez*, from *lessor*, or *laiser*, to let; L. Lat. *dimissio*, q. v.] A conveyance of any lands or tenements (usually in consideration of rent or other annual recompense,) made for life, for years or at will, but always for a less time than the lessor has in the premises; for if it be for the whole interest, it is more properly an assignment than a lease. 2 *Bl. Com.* 317. *Shep. Touch.* 266. *Watkins on Conv.* 220.—A contract in writing, under seal, whereby a person, having a legal estate in hereditaments, corporeal or incorporeal, conveys a portion of his interest to another, in consideration of a certain annual rent or render, or other recompense. *Archb. Landl. & Ten.* 2. This last definition is framed in accordance with recent English statutes. See 1 *Hilliard's Real Prop.* 212.

The usual words of operation in a lease, according to Blackstone, are "demise, grant and to farm let," which are translations of the Lat. *dimisi, concessi et ad firman tradidi*, used in the ancient leases. 2 *Bl. Com.* 317, 318. Other writers state the operative words to be "demise, lease and to farm let." *Watk. on Conv.* 207. *Archb. Landl. & Ten.* 19. But any other words which express an intention to part with the possession, will amount to a lease. 1 *Steph. Com.* 477. In Pennsylvania, the word "lease," even in a parol lease, implies a covenant for quiet enjoyment. 20 *Penn. St. R.* 482. As to the difference between a lease and a contract to work for a share of the crop, see 3 *Jones' Law R.* 63.

LEASE AND RELEASE. A species of conveyance deriving its efficacy from the statute of uses, and now the most common method in England, of conveying freehold estates. It is, as its name imports, a compound conveyance, consisting of a lease, or rather a bargain and sale, and a release, constituting separate deeds, and is effected thus: A lease, or rather bargain and sale upon some pecuniary consideration, for one year, is made by the tenant of the freehold to the lessee or bargainee. This, without any enrolment, makes the bargainor stand seised to the use of the bargainee, and vests in the bargainee the use of the term for a year, and then the statute immediately

annexes the possession. He, therefore, being thus in possession, is capable of receiving a release of the freehold and reversion, which must be made to a tenant in possession; and accordingly the next day a release is granted to him. 2 *Bl. Com.* 339. 1 *Steph. Com.* 496.

This mode of conveyance was universally in practice in the state of New-York until the year 1788, after which, on the revision of the statute law, it gave place to the conveyance by bargain and sale. 4 *Kent's Com.* 494.

LEASING-MAKING. In old Scotch criminal law. An offence consisting in slanderous and untrue speeches, to the disdain, reproach and contempt of the king, his council and proceedings, &c. *Bell's Dict.*

LEASUM. Sc. In old Scotch law. Lawful. *Skene de Verb. Sign.* vocc. *Manus mortua, Vadium.*

LEAURE, Leur. L. Fr. Breadth. *Kelham.*

LEAUTE. L. Fr. Legality; sufficiency in law. *Britt.* c. 109.

LEAVE. To give or dispose by will. "The word leave, as applied to the subject-matter, *prima facie* means a disposition by will." Bayley, J. 10 *East*, 438.

LEAWE. L. Fr. Water. *Kelham.*

LEDA. L. Lat. In old English law. A lathe (division of a county.) *Spelman.* See *Lathe.*

LEDE. L. Fr. Grievous. *Kelham.* Afflicted; impaired or damaged in appearance. *Lede ou bele*, sick (or ill-favored) or fair. *Britt.* c. 68.

LEDENGE. L. Fr. Damaged. *Kelham.*

LEDER. L. Fr. [from Lat. *lædere* ?] To hurt. *Ledera*; shall hurt. *Ledez*; hurt. *Kelham.*

LEDGREVIUS. L. Lat. In old English law. A lathe-reeve, or chief officer of a lathe. *Spelman.*

LEE. L. Fr. Large. *Kelham.*

Law. *Id.* A corruption of *ley*.

Read, (from *lier*, q. v.)

LEES. L. Fr. [from *lessor*, to let.] A lease. *Lees et dimissions.* *Britt.* c. 34. *Id.* cc. 42, 47, 114.

A leash by which dogs were led. *Yearb.* M. 18 Hen. VI. 6.

LEET. [L. Lat. *leta*; L. Fr. *lete*.] In English law. The name of a court of criminal jurisdiction, formerly of much importance, but latterly fallen into disuse. See *Court leet*.

Spelman derives this word from the Sax. *let*, a part, from its jurisdiction being parcelled out among smaller tribunals, or from *let*, a valuation or assessment. Others derive it from the Sax. *leod*, people; because all the residents in a manor assembled there. *Crabb's Hist. Eng. Law*, 110.

LEGAL. L. Lat. In old English law. The allay of money. *Cowell. Blount.*

A termination of the names of places in old records, supposed by Spelman to signify *place*.

LEGABILIS. Lat. [from *legare*, to bequeath.] In old English law. That which may be bequeathed. *Cowell.*

LEGACY. [Lat. *legatum*, q. v.] A bequest or gift of goods and chattels by testament. 2 *Bl. Com.* 512. 2 *Steph. Com.* 248.—A gift by will of personal property. *Ward on Legacies*, 1.—A gift by will either of a sum of money, called a *general or pecuniary legacy*, or of a specific article, as a piece of plate, called a *specific legacy*, (q. v.)

The word *legacy* properly imports a gift of *personal*, as *devise* does a gift of *real* property; but it may, by reference and construction, be descriptive of real estate. 1 *Burr.* 268, 272. 3 *Term R.* 716. *Shep. Touch.* (by Preston,) 400. The Lat. *legare* (q. v.) had this general sense in the civil law.

LEGAL. [from Lat. *legalis*, from *lex*, law.] According to law; required, authorized or permitted by law; good or valid in law; lawful; the opposite of *illegal*. As, a *legal* contract, a *legal* tender, *legal* resistance, and the like.

That which is governed by, or construed according to rules of law, in contradistinction to rules of equity; the opposite of *equitable*. As, a *legal* estate, *legal* assets, &c.

LEGAL ASSETS. That portion of the assets of a deceased party which by law are directly liable, in the hands of his executor or administrator, to the payment of debts and legacies. 1 *Story's Eq. Jur.* § 551. Such assets as can be reached in the hands of an executor or administrator, by a suit at law against him. *Id. ibid.*

LEGAL ESTATE. That kind of estate which is properly cognizable in the courts of common law, though noticed, also, in the courts of equity. 1 *Steph. Com.* 217.

LEGALIS HOMO. L. Lat. In old English law. A lawful man; a person to whom no objection could be made in a

court of justice; a person who stood *rectus in curia*, not outlawed, excommunicated or infamous; a person who could sue and be sued at law; a person competent to be sworn as a juror or witness; a person enjoying the privilege technically called *lex*, (q. v.) *Magna Charta*, c. 14. *Spelman*, voc. *Legalis*. *Legales* included both *liberos* and *probos*. 2 *Show.* 144. The phrase "lawful men" is still used in jury process.

LEGALITAS. L. Lat. [from *legalis*.] Legality; the quality, character or condition of a *legalis homo*, (q. v.) *Spelman*.

Behaviour according to law; good behaviour. *Id.*

LEGARE. Lat. In the civil and old English law. To bequeath; to leave or give by will; to give in anticipation of death; in Scotch phrase, to *legate*. *Inst.* 2. 20. *Dig.* 30. 12, 15, *et seq.* *Bract.* fol. 18 b. *Stat. Merton*, c. 2. 1 *Kames' Equity*, 259. Applied, in the civil law, to real as well as personal property, and so used by Bracton. *Legare fundum. Inst.* 2. 20. 9. *Legare terram. Bract.* fol. 186.

LEGATARIUS. Lat. In the civil law. One to whom a thing is bequeathed; a legatee, or legatary. *Inst.* 2. 20. 2, 4, 5, 10. *Bract.* fol. 40.

In old European law. A legate, messenger, or envoy. *Spelman*. See *Legatus*.

LEGATEE. [Lat. *legatarius*.] The person to whom a legacy is given. 2 *Bl. Com.* 512. Sometimes used in the sense of *devisee*. See 15 *East*, 505.

LEGATINE CONSTITUTIONS. In English law. Ecclesiastical laws enacted in national synods held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV. in the reign of King Henry III. about the years 1220 and 1268. 1 *Bl. Com.* 83.

ΛΗΓΑΤΟΝ, Ληγάτον. Latino-Gr. In the civil law. A legacy (*legatum*.) *Dig.* 48. 22. 16.

LEGATUM. Lat. [from *legare*, q. v.] In the civil law. A legacy; a gift left by will, (*donatio testamento relicta*.) *Dig.* 31. 36. A gift left by a deceased person, to be executed by the heir; (*donatio quædam à defuncto relicta, ab hærede præstanda*.) *Inst.* 2. 20. 1.

In the common law. A legacy; a gift by will. Bracton, following the civil law, makes it to be the same with a *donatio mortis causa*. *Bract.* fol. 49. *Cum legatum sit donatio mortis causâ, et legatum*

*tantum morte confirmatur, et [ut?] donatio inter vivos traditione. Id. ibid. See Dig. 32. 87. This passage is substantially quoted in Dyer, 143.*

In old ecclesiastical law. A soul-scot, mortuary, or gift to the church. *Cowell.*

**LEGATUS.** Lat. [from *legare*, to send a messenger.] A legate; an ambassador, envoy or nuncio. Called, also, in old European law, *legatarius. Spelman.* *Legatos violare contra jus gentium est.* To offer violence to ambassadors is against the law of nations. *Branch's Princ.*

In old European law. A messenger of a private person. *Spelman.*

A king's justice or commissary, (*missus dominicus.*) *Id.*

**LEGEM FACERE.** L. Lat. In old English law. To make law, or oath. *Legem vadiare*; to wage law. *Legem habere*; to have law; to be capable of giving evidence upon oath. *Legem amittere*; to lose the law, or privilege of being admitted to oath. *Legem terræ amittentes perpetuam infamiæ notam inde merito incurrunt*; they who lose the *lex terræ* (law of the land,) justly incur therefor the perpetual brand of infamy. 3 *Inst.* 221. In Branch's Maxims, the peculiar meaning of *lex terræ*, in this passage, has been misapprehended.

**LEGEM FERRE.** Lat. In the Roman law. To propose a law to the people for their adoption. *Heinecc. Antiq. Rom.* lib. 1, tit. 2. *Tayl. Civ. Law*, 9.

**LEGEM JUBERE (or SCISCERE.)** Lat. In the Roman law. To give consent and authority to a proposed law; to make or pass it. *Tayl. Civ. Law*, 9.

**LEGER, Legier.** L. Fr. Light; short; easy. *Kelham.*

Quick; sudden; violent. *L. Fr. Dict.*

**LEGEREMENT.** L. Fr. [from *leger*, q. v.] Slightly; easily; shortly. *Kelham.*

**LEGERTE.** L. Fr. [from *leger*, q. v.] Levity. *De legerte de jaungle*; from levity of discourse. *Britt. c.* 96.

**LÈGES.** Lat. [plur. of *lex*, q. v.] Laws. At Rome, the *leges* (the decrees of the people in a strict sense) were laws which were proposed by a magistrate presiding in the senate, and adopted by the Roman people in the *comitia centuriata.* 1 *Mackell. Civ. Law*, 18, § 27. *Tayl. Civ. Law*, 177, 178. See *Lex.*

*Leges figendi et refigendi consuetudo est periculosissima.* The practice of fixing

and re-fixing [making and remaking] the laws is a most dangerous one. 4 *Co. pref.*

*Leges non verbis sed rebus sunt impositæ.* Laws are imposed not on words but things. 10 *Co.* 101. *Branch's Pr.*

*Leges posteriores priores contrarias abrogant.* Later laws abrogate prior laws that are contrary to them. 1 *Co.* 25 b. When the provisions of a later statute are opposed to those of an earlier, the earlier statute is considered as repealed. *Broom's Max.* 11, [23.] A very ancient maxim in the Roman law, and called by Blackstone a general principle of universal law. 1 *Bl. Com.* 89. See *Abrogare.*

*Leges suum ligent latorem.* Laws should bind their own maker. *Fleta*, lib. 1, c. 17, § 11.

**LEGES ANGLIÆ.** Lat. The laws of England, as distinguished from the civil law and other foreign systems. *Et omnes comites et barones unâ voce responderunt, quod nolunt leges Angliæ mutare, quæ hucusque usitatæ sunt et approbatæ*; and all the earls and barons with one voice answered, that they will not change the laws of England, which have hitherto been used and approved. *Stat. Merton*, c. 9. 1 *Bl. Com.* 19.

**LEGES NON SCRIPTÆ.** Lat. In English law. Unwritten or customary laws, including those ancient acts of parliament which were made before time of memory. *Hale's Hist. Com. Law*, 5. See 1 *Bl. Com.* 63, 64.

**LEGES ROMANÆ.** Lat. The Roman laws. *Legum Romanarum non est vilis auctoritas, sed non adeo vim suam extendunt, ut usum vincant aut mores*; strenuous autem legisperitus, sicubi casus emergerit qui consuetudine feudi non sit comprehensus, absque calumnia uti poterit lege scripta; the Roman laws are of no mean authority, but their force does not extend so far as to overcome usage or custom; but a zealous advocate, if a case arise which is not embraced within the custom of the fief, may without objection make use of the written law. *Feud. Lib.* 2, tit. 1.

**LEGES SCRIPTÆ.** Lat. In English law. Written laws; statute laws, or acts of parliament which are originally reduced into writing before they are enacted, or receive any binding power. *Hale's Hist. Com. Law*, 1, 2.

**LEGES SUB GRAVIORI LEGE.** Lat. Laws under a weightier law. *Hale's Hist. C. Law*, 46. 44.

**LEGES TABELLARÆ.** Lat. Roman laws regulating the mode of voting by ballot, (*tabella*.) 1 *Kent's Com.* 232, note.

**LEGIBUS SOLUTUS.** Lat. Released from the laws; not bound by the laws. An expression applied in the Roman civil law to the emperor. *Calv. Lex.* 3 *Gibbon's Rom. Emp.* 157, (Am. ed. 1844.)

**LEGIOSUS.** L. Lat. In old records. Litigious; and so subjected to a course of law. *Cowell*.

**Legis constructio non facit injuriam.** The construction of the law does no wrong; a construction made by the law works no injury. See *Constructio*.

**Legis interpretatio legis vim obtinet.** The interpretation of law acquires the force of law. *Branch's Princ.*

**Legis minister non tenetur in executione officii sui, fugere aut retrocedere.** The minister of the law is bound, in the execution of his office, not to fly nor to retreat. *Branch's Princ.*

**LEGISPERITUS.** L. Lat. A person skilled or learned in the law; a lawyer or advocate. *Feud. Lib.* 2, tit. 1.

**LEGIT UT CLERICUS.** L. Lat. (He reads as a clerk.) In old English practice. The answer made by the ordinary to the question *Legit vel non?* importing that a prisoner could read, and was consequently entitled to the benefit of clergy. *Dyer*, 205.

**LEGIT VEL NON?** Lat. (Does he read or not?) In old English practice. The question asked of the ordinary, on the trial, whether a prisoner claiming his clergy could read. 1 *Salk.* 61. See *Benefit of clergy*.

**LEGITIM.** In Scotch law. Children's claim out of the free moveable estate of their father, amounting to one-half or one-third, (according to circumstances,) of his moveables, after paying his debts. *Bell's Dict.* See 4 *Bell's Appeal Cases*, 286.

**LEGITIMACY.** [L. Lat. *legitimitas*.] Lawful birth; the condition of being born in wedlock; the opposite of illegitimacy, or bastardy.

**LEGITIMATE.** [Lat. *legitimus*.] Lawful; lawfully born; born in lawful wedlock. Commonly applied to issue.

To **LEGITIMATE.** To make lawful; to confer legitimacy. To place a child born before marriage on the footing of those born in lawful wedlock. 26 *Vermont R.* 653, 657, 658.

**LEGITIMATIO.** Lat. In the civil law.

A making lawful; the conferring of a lawful character or condition, as upon children born before marriage; legitimation. *Inst.* 1. 10. 13.

In English law. Legitimacy; lawful birth. *Semper præsumitur pro legitimatione.* The presumption always is in favor of legitimacy. *Branch's Pr.*

**LEGITIMATION.** The act of making legitimate; the act of conferring legitimacy on a child born before marriage. 26 *Vermont R.* 653, 657, 658.

**LEGITIME.** Lat. Lawfully; with the authority of law. *Legitime imperanti parere necesse est.* One who commands lawfully must be obeyed. *Jenk. Cent.* 120, case 12.

**LEGITIMITAS.** L. Lat. [from *legitimus*, q. v.] In old English law. Legitimacy; the condition of being lawfully born, as opposed to bastardy, (*bastardia*.) *Fleta*, lib. 5, c. 5, § 7.

**LEGITIMUS.** Lat. Lawful; legitimate. *Legitimus hæres et filius est quem nuptiæ demonstrant*; a lawful son and heir is he whom the marriage points out to be lawful. *Bract.* fol. 63.

**LEGO.** Lat. In the Roman law. I bequeath. A common term in wills. *Dig.* 30. 36. 81, *et seq.* See *Legare*.

**LEGULEIUS.** Lat. A person skilled in law, (*in legibus versatus*;) one versed in the forms of law. *Calv. Lex. Cic. de Orat.* i. 55.

**LEI.** L. Fr. Law. *Prest affaire sa lei*; ready to make his law. *Yearb. M.* 2 *Edw.* II. 21.

**LEIC'.** An abbreviation of *Leicestria*, Leicester. 1 *Inst. Cler.* 28.

**LEIDGREVE.** In Saxon law. An officer who had jurisdiction over a *lathe*. *Cowell*.

**LEIE.** L. Fr. Law. *Kelham*. An old form of *ley*.

**LEIPA.** L. Lat. In old English law. A fugitive or runaway. *LL. Hen.* I. c. 43. *Spelman*. Possibly the root of *elope*.

**LENA.** Lat. In the Roman law. A bawd. *Dig.* 23. 2. 43. 7.

**LEOD.** Sax. People; a people; a nation. *Spelman*, voc. *Leodes*.

**LEODES.** L. Lat. [from Sax. *leod*.] In old European law. A vassal, or liege man; (*vassallus*; *homo ligeus*.) *Spelman*. Service, (*servitium*.) *Id. Marculf.* lib. 1, form. 40.

A were or weregild, (*wera*, *wergildum*.) *Spelman*.

LEPORARIUS. L. Lat. In old English law. A grey-hound for the hare. *Fleta*, lib. 2, c. 41, § 21. 2 *Mon. Angl.* 283.

LEPRA. Lat. In old English law. Leprosy. *Fleta*, lib. 6, c. 40, § 3. *Leprosus*; a leper. *Id. ibid.*

LESE MAJESTY, *Læse Majesty*. [L. Fr. *leze majest.*] The old English and Scotch translation of *læsa majestas*, or high treason. 2 *Reeves' Hist. Eng. Law*, 6.

LESER. L. Fr. To hurt. *Kelham*.

LESION. Fr. Damage; injury; detriment. *Kelham*. A term of the Scotch law. 1 *Kames' Eq. pref.*

In the civil law. The injury suffered by one who does not receive a full equivalent for what he gives in a commutative contract. *Civ. Code of Louis.* art. 1854.—Loss sustained by not receiving the just price or value for a thing sold. 7 *Texas R.* 134.

Inequality in contracts. *Pothier, Obl.* part 1, ch. 1, sec. 1, art. 3, § 4.

LESPEGEN. Sax. A lesser thane or baron. *Const. Canuti Regis de Foresta*, art. 2. *Spelman* prefers to write it *Les-then*.

LESSEE. L. Fr. and Eng. [from *lesser*, to let.] He to whom a lease is made for life, or years, or at will. *Litt. sect.* 57.

*Lessee* and *cropper* distinguished. 3 *Jones' Law R.* 61.

LESSER. L. Fr. To let. *Lesse à ferme*; let to farm. *Britt.* c. 21.

To suffer. *Lesse cheir*; let fall. *Id.* c. 1.

LESSOR. L. Fr. and Eng. He who lets lands for term of life, or years, or at will. *Litt. sect.* 57.

LEST. Fr. In French maritime law. Ballast. *Ord. Mar.* liv. 4, tit. 4, art. 1.

LESTAGE, *Lastage*. [L. Lat. *lestagium*; from Sax. *last*, a burden.] In old English law. A custom claimed in fairs or markets for carrying things. *Rastal's Expos. Cowell*.

LESTINGE. Sax. In old English law. Acquittance from lestage. *Fleta*, lib. 1, c. 47, § 11.

LESTUS, *Lastus*. L. Lat. In old English law. A last; a measure of commodities. *Fleta*, lib. 2, c. 12, §§ 2, 3.

LESWES, *Lesues*. Sax. Pastures. *Domesday. Co. Litt.* 4 b. A term often inserted in old deeds and conveyances. *Cowell*.

LET. In old conveyancing. Hindrance; interruption. Still occasionally used in the phrase "without any *let*, suit, trouble," &c.

To LET. [L. Lat. *locare, tradere*.] In conveyancing. To demise or lease. See *To farm let*. "To *let* and set" is an old expression.

To LET. [L. Lat. *tradere*.] In practice. To deliver. "To *let* to bail" is to deliver to bail on arrest. See *Bail*, L. Fr.

To LET IN. In practice. To admit a party as a matter of favor. See *To open*.

LETA. L. Lat. In old English law. Leet; a leet or court leet. *Spelman*. See *Leet*.

LETRADO. Span. In Spanish law. An advocate. *White's New Recop.* b. 1, tit. 1, c. 1, § 3, note.

LETTER. [Lat. *epistola*.] A written communication from one person to another.\* An order for goods, folded and directed as a letter, though not sealed, is a letter, or mailable matter, within the act of Congress of March 3, 1845; § 10. 12 *Howard's R.* 88, 97. A seal is not necessary to constitute it a letter, or make it chargeable with postage. *Id. ibid.*

LETTER, LETTERS. [Lat. *epistola*; L. Lat. *litera, littera, literæ, breve*; L. Fr. *lettre, lettres, briefe*.] The form given, from a very early period, to many public and private written instruments, as letters patent, writs in actions, appointments of attorney, of executors and administrators, and some kinds of conveyance; and still to a considerable extent adhered to. See *Epistola, Lettre*. It appears to have been derived from the form of private epistolary correspondence among the Romans. See *Breve*. And see the form of a conveyance in Greek, preserved in the Digests. *Dig.* 8. 3. 37. See *Id.* 17. 1. 59, 60. *Id.* 20. 1. 34. In Scotch practice, judicial writs and other instruments are still called letters. *Bell's Dict.* in voc.

LETTERS OF ADMINISTRATION. The instrument by which an administrator or administratrix is authorized by the surrogate or other proper officer, to have the charge or administration of the goods and chattels of a party who has died intestate, or has left a will without appointing an executor. See *Administration*.

LETTER OF ATTORNEY. [L. Lat. *litera attornati*,] and anciently, LETTERS OF ATTORNEY, [L. Lat. *litteræ procuratoriæ*.] A writing authorizing another person, who in such case is called the attorney of the person appointing him, to do any lawful act in the stead of another; as to give seisin of lands, to receive debts, to

sue a third person, &c. *Cowell. Wharton's Lex. Story on Agency*, § 3. Now more commonly called a *power of attorney*, (q. v.) See *Letter*.

**LETTERS CLOSE**, (or **CLAUSE**.) [L. Lat. *literæ clausæ*.] In English law. Letters or writs *closed* up and sealed on the outside, as distinguished from *letters patent*, (q. v.) See *Close writs*.

**LETTER OF CREDIT**. A letter written by a merchant or correspondent to another, requesting him to credit the bearer or other person named, with a certain sum of money. *McCulloch's Dict. Wharton's Lex.* See 3 *Kernan's R.* 630. Letters of credit usually contain a request that some one will advance money or sell goods to a third person, and an undertaking, on the part of the writer, that the debt which may be contracted by the third person in pursuance of the request, shall be duly paid. *Bronson, J. 5 Hill's R.* 642. And see 3 *Comstock's R.* 203.

**LETTER** (or **LETTERS**) OF **EXCHANGE**. [L. Lat. *litera cambii, literæ cambitoriaræ*.] The old title of a bill of exchange. *Reg. Orig.* 194. Still preserved in the Fr. *lettre de change*. See *Bill of exchange*.

**LETTER OF LICENSE**. A letter or written instrument given by creditors to their debtor, who has failed in trade, &c. allowing him longer time for the payment of his debts, and protecting him from arrest in the mean time. *Tomlins. Holthouse. Wharton's Lex.*

**LETTERS OF MARQUE AND REPRISAL**. [Fr. *lettres de marque*.] In public law. A commission issued by the authority of the sovereign of a nation, to one or more of its subjects, authorizing the seizure of the property of the subjects or sovereign of an offending nation, and the detention of it as a pledge, until satisfaction for the injury complained of, be made.\* 1 *Kent's Com.* 61. 1 *Bl. Com.* 258. The words *marque* and *reprisal* in this case are synonymous; the latter signifying a *taking in return*, the former the passing the *frontiers*, in order to such taking. *Id. ibid.* See *Marque, Reprisal*.

*Lettres de marque* is defined by Emerigon to be, the right of passing the limits or frontiers of another sovereign, and of doing justice to one's self; (*droit de passer les limites ou frontieres d'un autre prince, et de se faire justice à soi-meme.*) *Tr. des Ass.* ch. 12, sect. 36.

**LETTER MISSIVE**. In English equity practice. A letter sent by the Lord Chancellor to a peer, when a defendant in the Court of Chancery, requesting his appearance, together with a copy of the bill.\* 3 *Bl. Com.* 445.

In civil law practice. Letters sent on an appeal from the judge *à quo* to the judge *ad quem*; otherwise called *letters dimissory*, and *apostols*, (qq. v.) *Hallifax, Anal.* b. 3, c. 11, num. 34.

**LETTERS PATENT**. [L. Lat. *literæ patentes*; L. Fr. *lettres overtes*, open letters.] The modern form of royal grants in England; called *patent*, that is *open*, because they are not sealed up, but exposed to open view, with the great seal pendant at the bottom, and are usually directed or addressed by the king to all his subjects at large; differing in this respect from *letters close*, which are directed to particular persons, and for particular purposes, and are therefore *closed* up and sealed on the outside.\* 2 *Bl. Com.* 346. See *Hubback's Evid. of Succession*, 616, *et seq.*

This form of grant has been substantially adopted in the United States, where it is commonly termed a *patent*. 1 *N. Y. Rev. St.* [198,] 184. See *Patent*.

**LETTERS OF REQUEST**. In English ecclesiastical law. The mode of commencing an original suit in the Court of Arches, instead of proceeding in the first instance in the Consistory Court; being an instrument or *letter* by which the judge of the inferior court *requests* the superior judge to take cognizance of the suit, thereby waiving or remitting his own jurisdiction; and this authorizes the suit to be instituted in the superior court, which could otherwise only exercise jurisdiction as a court of appeal.\* *Wharton's Lex. Holthouse.*

**LETTERS OF SLANES**, (or **SLAINS**.) In old Scotch law. A kind of bond by which the heirs and relations of a person who had been murdered bound themselves, in consideration of an *assythment*, or composition paid to them, to forgive, "pass over and forever forget, and in oblivion inter all rancor, malice, revenge, prejudice, grudge and resentment that they have or may conceive against the aggressor or his posterity, for the crime which he had committed, and discharge him of all action, civil or criminal, against him or his estate, for now and ever." 1 *Robertson's Charles V.* Appendix, Note xxiii. *Bell's Dict. voc. Slains.*

**LETTERS TESTAMENTARY.** An instrument granted by a surrogate, or other proper officer, to an executor, after probate of a will, authorizing him to act as executor. 2 *N. Y. Rev. St.* [69,] 13, § 1.

**LETTEREURE, Lettrure.** L. Fr. Literature; learning. *Kelham.*

**LETTRE.** L. Fr. In old English law. A letter; conveyance or grant, so called from its form. *A toutz ceuz que ceste lettre verrount ou orrount, A. de B. salut: Sachés moy aver done à P. &c.* To all those who shall see or hear this letter, A. of B. greeting: Know that I have given to P. &c. *Britt. c. 41.*

A writ. *Id. c. 120.*

A written authority to an attorney. *Id. c. 40.*

**LEU.** L. Fr. A place; the place. *Britt. c. 119.* An old form of *lieu*.

**LEU.** L. Fr. [from *lier*, to read.] Read. *Britt. cc. 91, 120.*

**LEUCA, Leuga, Lega.** L. Lat. In old French law. A league, consisting of fifteen hundred paces. *Spelman.*

In old English law. A league or mile of a thousand paces. *Domesday. Spelman. Fleta, lib. 2, c. 2, § 2.*

A privileged space around a monastery of a league or mile in circuit. *Spelman.*

**LEUDIS, Leodis.** L. Lat. [from Sax. *leod*, people or subject.] In old European law. A vassal; a liege man or feudal dependant, (*homo legius seu feudalisis*;) a retainer, (*cliens*;) a feudal tenant. *Spelman.*

A crown vassal or baron. *Spelman. Lex Burgund. in Add. 1, c. 1, § 14, cited ibid.*

A layman; a common or illiterate person. *Spelman.* Hence the old English *lewd. Id.*

A composition; a were or were-gild. *Id.*

**LEVANDÆ NAVIS CAUSA.** Lat. For the purpose of lightening the ship. *Inst. 2. 1. 48. Levandæ navis gratia. Dig. 14. 2. 1.*

**LEVANT.** L. Fr. [from *lever*, to raise or rise.] Rising up. A term applied to cattle. See *Levant et couchant.*

**LEVANT ET COUCHANT.** L. Fr. Rising up and lying down. A term applied to a stranger's cattle which have been long enough on another's land to have lain down and risen up to feed, which in general is held to be one night, at least; or rather a night and a day. 3 *Chitt. Bl. Com. 9,* and note. More properly, *couchant et le-*

*vant*, which is the old form of the phrase. See *Couchant.*

**LEVANTES ET CUBANTES.** L. Lat. Rising up and lying down. A term applied to cattle. 3 *Bl. Com. 9. Levantia et cubantia. Vaugh. 252.* See *Levant et couchant.* Applied by Bracton to villeins who actually lived on their lord's estate, (*in villenagio.*) *Bract. fol. 6 b.*

**LEVANUM.** L. Lat. In old English law. Leaven. *Pro gesto vel levano*; for yeast or leaven. *Fleta, lib. 2, c. 10.*

**LEVARE.** Lat. and L. Lat. In old English law. To raise or lift up; to set or put up; to cast up; to build or construct; to levy. *Levare domum*; to raise or erect a house. *Reg. Orig. 199. Levare fossatum*; to throw up a dyke or ditch. *Id. ibid. Stat. Westm. 2, c. 46. Levare stagnum*; to make a pool or pond. *Reg. Orig. 199. Fleta, lib. 4, c. 1, § 19. Levare nocumentum*; to levy a nuisance. 3 *Bl. Com. 221.*

To levy or raise money, as a tax. *Reg. Orig. 188. Assidere, taxare et levare*; to assess, tax and levy. *Id. ibid.*

**LEVARI FACIAS.** L. Lat. (You cause to be levied.) In English practice. A writ of execution, commanding the sheriff to levy or make of the lands and chattels of the judgment debtor, the sum recovered by the judgment. *Reg. Orig. 298 b. 2 Tidd's Pr. 1042. 3 Bl. Com. 417.* This is now little used, the remedy by *elegit* being much more effectual. *Id. ibid. Sewell's Sheriff, 201.*

In Pennsylvania, a *levari facias* is the proper form of process in equity for collecting charges upon land. 23 *Penn. St. R. 39.*

**LEVER.** L. Fr. To levy. *Britt. c. 21. Leva un fyn*; levied a fine. *Yearb. H. 1 Edw. II.*

To raise; to erect; to build or construct. *Britt. c. 54.*

To stir up; to display. *Kelham.*

**LEVIR.** Lat. [Gr. *δὲ ἄνδρ.*] In the Roman law. A husband's brother; a wife's brother-in-law. *Dig. 38. 10. 4. 6. Calv. Lex.*

**LEVIS.** Lat. Light; slight; trifling. *Levis culpa*; slight fault or neglect. *Levisima culpa*; the slightest neglect. See *Culpa.*

*Levis nota*; a slight mark or brand. 1 *Mackeld. Civ. Law, 135, § 123.*

**LEVITICAL DEGREES.** Degrees of kindred within which persons are prohibited

to marry. So called, as being defined by the Levitical law. 1 *Bl. Com.* 435. *Burn's Eccl. Law*, Marriage, I. *Vaugh.* 206, 302. 1 *Chitt. Bl. Com.* 435, note. *Shelf. Marr. & Div.* 158—162.

To LEVY. [Lat. *levare*.] In old English law. To raise or lift up; to cast or throw up; to set or put up; to erect or build; to make or construct. To levy a house or mill, a dyke or pond, and to levy a nuisance were common expressions. 3 *Bl. Com.* 221. See *Levare*. To levy a tax, had the same radical sense of raising.

In later law. To carry on certain proceedings at law, especially those peculiar to fines of lands; to acknowledge a fine. The party *levying* the fine was called the cognizor, and he to whom it was levied, the cognizee. 2 *Bl. Com.* 350, 351. The radical idea of raising seems to have been retained even in this application of the term, and Blount mentions his having seen a deed in which a party covenanted "to rere (rear) a fine."

To LEVY. In practice. To collect by execution. Executions are usually endorsed with a direction to the sheriff, to "levy" so much money.

To take or seize in execution; to apply an execution to property; to subject property to the operation of an execution. The expression in this sense is, "to levy on." See *Levy*.

LEVY. In practice. A taking or seizure of property under execution, by the officer to whom the execution is directed; a taking of personal property in execution, as preliminary to a sale; the application of a writ of execution to the property of the party named in the writ.\* A levy is made on goods, by taking actual possession of them, or bringing them within the view and control of the officer, and taking an inventory of them. 1 *Burr. Pr.* 298. 23 *Wendell's R.* 490. 2 *Hill's (N. Y.) R.* 666. A levy is made on real estate, by giving public notice of the sale of it. 1 *Burr. Pr.* 300. 5 *Hill's (N. Y.) R.* 228.

LEX. Lat. [L. Fr. *ley*.] Law; a law; the law. Defined by Bracton, *commune præceptum, virorum prudentum consultum, delictorumque quæ sponte vel ignorantia contrahuntur coertio, reipublicæ sponsio communis*; a common precept, [or rule of general obligation,] the deliberate enactment of learned men; the means of repressing crimes committed either wilfully or through ignorance; the common pledge of the commonwealth.

*Bract. fol. 2.* This definition is taken, word for word, from the Digests. *Dig. 1. 3. 1.* In this sense, the words *jus* and *lex* are synonymous. In the maxims which follow, *lex*, for the most part, signifies the common law.

*Lex æquitate gaudet.* Law delights in equity. *Jenk. Cent.* 36, case 69.

*Lex beneficialis rei consimili remedium præstat.* A beneficial law affords a remedy in a similar case. 2 *Inst.* 689.

*Lex citius tolerare vult privatum damnum, quam publicum malum.* The law will sooner tolerate a private loss than a public evil. *Co. Litt.* 152 b.

*Lex deficere non debet in justitia exhibenda.* The law ought not to fail in showing justice. *Jenk. Cent.* 4, case 3. *Co. Litt.* 197 b.

*Lex dilationes semper exhorret.* The law always abhors delays. 2 *Inst.* 240.

*Lex est ab æterno.* Law is from everlasting. A strong expression to denote the remote antiquity of the law. *Jenk. Cent.* 34, case 66.

*Lex est dictamen rationis.* Law is the dictate of reason. *Jenk. Cent.* 117, case 33. The common law will judge according to the law of nature, and the public good. *Id.*

*Lex est norma recti.* Law is a rule of right. *Branch's Pr.*

*Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet.* Law is the perfection of reason, which commands what is useful and necessary, and forbids the contrary. *Co. Litt.* 319 b. *Id.* 97 b.

*Lex est sanctio sancta, jubens honesta et prohibens contraria.* Law is a sacred sanction, commanding what is right and prohibiting the contrary. 2 *Inst.* 587. This is taken from Bracton, (fol. 2,) with a slight alteration.

*Lex est tutissima cassis; sub clypeo legis nemo decipitur.* Law is the safest helmet; under the shield of the law no one is deceived. 2 *Inst.* 56.

*Lex favet doti.* The law favors dower. *Jenk. Cent.* 50, case 95. But see the late English Dower Act, 3 and 4 Will. IV. c. 105.

*Lex fingit ubi subsistit æquitas.* The law feigns where equity exists. *Branch's Princ.*

*Lex intendit vicinum vicini facta scire.* The law intends [or presumes] that one neighbor knows what another neighbor does. *Co. Litt.* 78 b.

*Lex judicat de rebus necessario faciendis, quasi re ipsa factis.* The law judges of

things that must necessarily be done, as if they were in fact done. *Branch's Princ.*

**Lex necessitatis est lex temporis, i. e. instantis.** The law of necessity is the law of the time, that is, of the instant, or present moment. *Hob.* 159.

**Lex neminem cogit ad vana seu inutilia peragenda.** The law compels no one to do vain or useless things. *5 Co.* 21 a. *Wingate's Max.* 600, max. 152. *Co. Litt.* 197 b. See *3 Bl. Com.* 144. *Shep. Touch.* 172. A sheriff, after a levy once made under an execution, is not required to make a new levy on the same property, upon receiving a subsequent execution. *7 Penn. St. (Barr's) R.* 206, 214. *17 Johns. R.* 115.

**Lex nemini facit injuriam.** The law does injury to no one. *Branch's Princ.*

**Lex nemini operatur iniquum.** The law works injustice to no one. *Jenk. Cent.* 18, case 33. *Id.* 22, case 41. *Id.* 284, case 14.

**Lex nil facit frustra.** The law does nothing in vain. *1 Ventr.* 417. *Jenk. Cent.* 12, case 19. *Id.* 17, case 30. *Id.* 51, case 98. *Id.* 63, case 19. *Id.* 182, case 70.

**Lex nil frustra jubet.** The law commands nothing vainly. *3 Bulst.* 280.

**Lex non cogit ad impossibilia.** The law does not compel the doing of impossibilities. *Hob.* 96.

**Lex non deficit in justitia exhibenda.** The law does not fail in showing justice. *Jenk. Cent.* 31, case 61. *Id.* 27, case 50. *Id.* 41, case 78. Applied in illustration of the old practice. *Id. ibid.*

**Lex non præcipit inutilia, quia inutilis labor stultus.** The law does not command useless things; for useless labor is folly. *5 Co.* 89 a. *Frost's case.* *Co. Litt.* 197 b.

**Lex non intendit aliquid impossibile.** The law does not intend any thing impossible. *12 Co.* 89 a. For otherwise, the law should not be of any effect. *Id.*

**Lex non patitur fractiones et divisiones statuum.** The law does not suffer fractions and divisions of estates. *Branch's Princ.* *1 Co.* 87 a.

**Lex non requirit verificari quod apparet curiæ.** The law does not require that to be verified [or proved] which is apparent to the court. *9 Co.* 54 b, *Baten's case.*

**Lex plus laudatur quando ratione probatur.** The law is the more praised when it is approved by reason. *Litt. epilog.* A hexameter line.

**Lex prospicit, non respicit.** The law

looks forward, not backward. *Jenk. Cent.* 284, case 15.

**Lex punit mendacium.** The law punishes falsehood. *Jenk. Cent.* 15, case 26.

**Lex rejicit superflua, [pugnantia.]** The law rejects superfluous [and contradictory] things. *Jenk. Cent.* 133, case 72. *Id.* 140, case 86.

**Lex reprobat moram.** The law reprobrates delay. *Jenk. Cent.* 35, case 68.

**Lex semper dabit remedium.** The law will always give a remedy. *Branch's Princ.*

**Lex semper intendit quod convenit rationi.** The law always intends what is agreeable to reason. *Co. Litt.* 78 b.

**Lex spectat naturæ ordinem.** The law regards the order of nature. *Co. Litt.* 197 b.

**Lex succurrit ignorant.** The law assists the ignorant. *Jenk. Cent.* 15, case 26.

**Lex succurrit minoribus.** The law aids minors. *Jenk. Cent.* 51, case 97.

**Lex uno ore omnes alloquitur.** The law addresses all with one [the same] mouth or voice. *2 Inst.* 184.

**LEX.** Lat. In the Roman law. A rule of action binding a whole community, (*commune præceptum*;) the same with *jus*. *Calv. Lex. Dig.* 1. 3. 1.—A law enacted by a proper authority. *Tayl. Civ. Law*, 146, 147.

A written law, or statute;\* that kind of law which was enacted or ordained by the whole body of the Roman people, on the proposition or recommendation of a senatorial magistrate. *Inst.* 1. 2. 4. This was the proper sense of the word. *Tayl. Civ. Law*, 146, 148. Otherwise termed *populiscitum*. *Id.* 177, 178.

Positive law, as opposed to natural. *Tayl. Civ. Law*, 148.

That system of law which descended from the Twelve Tables, and formed the basis of all the Roman law. *Id. ibid.*

The terms of a private covenant; the condition of an obligation. *Id.* 149.

A form of words prescribed to be used upon particular occasions. *Id. ibid.*

**LEX.** L. Lat. In old English law. The Roman civil law. Bracton so distinguishes it in the following passage: "*convenit lex cum consuetudine Anglica*," citing the Digests immediately after. *Bract.* fol. 30 b.

An oath; the oath with compurgators, in the proceeding called *making law*. *Formantur verba legis secundum formam recordi*; the words of the oath are framed

according to the form of the record. *Bract.* fol. 410. *Legem vadiare*; to wage law; to give pledge to make law. *Legem facere*; to make law; to make oath with compurgators. *Id.* fol. 366. *Reg. Orig.* 116. *Lex vincit sectam*; the law overcomes the suit; the defendant's *lex* (oath with compurgators) prevails against the plaintiff's *secta*. *Bract.* fol. 214 b. See *To make law*, *Wager of law*.

LEX. In the language of the middle ages,—a body or collection of law; not a code, in the proper sense of that term. 1 *Mackeld. Civ. Law*, 78, § 88.

LEX ÆLIA SENTIA. Lat. In the Roman law. The Ælian Sentian law, respecting wills, proposed by the consuls Ælius and Sentionius, and passed A. U. 756; restraining a master from manumitting his slaves in certain cases. *Calv. Lex. Complementum, De Legibus Romanis. Hallifax, Anal.* b. 1, c. 3, num. 18.

LEX AGRARIA. Lat. In the Roman law. The Agrarian law. A law proposed by Tiberius Gracchus, A. U. 620, that no one should possess more than five hundred acres of land; and that three commissioners should be appointed to divide among the poorer people what any one had above that extent. *Liv. Epit.* 58. *Plut. in Gracch.* 837. There were several laws termed *agrariæ*.

LEX ALAMANNORUM, (or ALEMANNORUM.) The law of the Alamanni; first reduced to writing from the customs of the country, by Theodoric, king of the Franks, A. D. 512. Amended and re-enacted by Clotaire II. *Spelman. Bull. Hor. Jur.* 84.

LEX ANGLIÆ. The law of England. One of the names of the common law.

*Lex Angliæ est lex misericordiæ.* The law of England is a law of mercy. 2 *Inst.* 315.

*Lex Angliæ non patitur absurdum.* The law of England does not suffer an absurdity. 9 *Co.* 22 a, *Case of Avowry*.

*Lex Angliæ nunquam matris, sed semper patris conditionem imitari partum judicat.* The law of England adjudges that the offspring shall never follow the condition of the mother, but always that of the father. *Fortescue de L. L. Angliæ*, c. 42. *Co. Litt.* 123 a. This is in opposition to the rule of the civil law, *Partus sequitur ventrem*, (q. v.)

*Lex Angliæ nunquam sine parlamento mutari potest.* The law of England can

never be changed without parliament. 2 *Inst.* 218.

LEX ANGLIÆ, or LEX ANGLICANA. The law or curtesy of England. *Bract.* fol. 22, 31. *Fleta*, lib. 6, c. 55, § 4. See *Curtsey*.

LEX APPARENS. L. Lat. In old English and Norman law. Apparent or manifest law. A term used to denote the trial by battel or duel, and the trial by ordeal, *lex* having the sense of process of law, (*processus litis*.) *Spelman.* Called *apparent*, because the plaintiff was obliged to make his right *clear* by the testimony of witnesses, before he could obtain an order from the court to summon the defendant. *Id.* See *Lex manifesta*.

LEX AQUILIA. In the Roman law. The Aquilian law; a celebrated law passed on the proposition of the tribune C. Aquilus Gallus, A. U. 672, regulating the compensation to be made for that kind of *damage* called *injurious*, (*de damni injuriâ data*,) in the cases of killing or wounding the slave or beast of another. *Inst.* 4. 3. *Dig.* 9. 2. *Cod.* 3. 35. *Calv. Lex. Complementum, De Legibus Romanis. Hallifax, Anal.* b. 2, c. 24. 1 *Kames' Equity*, 60, 61.

LEX ATILIA. In the Roman law. The Atilian law; a law passed on the proposition of the tribune L. Atilius Regulus, A. U. 443, respecting guardianships, (*de tutelis*,) authorizing the prætor, with a majority of the tribunes, to assign guardians to persons, where none had been appointed. *Inst.* 1. 20. This law fell into disuse, and was changed by Justinian. *Id.* 1. 20. 3, 4. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 19, § 241.

LEX ATINIA. In the Roman law. The Atinian law; a law declaring that the property in things stolen should not be acquired by prescription, (*usucapione*.) *Inst.* 2. 6. 2. *Adam's Rom. Ant.* 207.

LEX BAIUVARIORUM, (BAIORIORUM, or BOIORUM.) The law of the Bavarians, a barbarous nation of Europe, first collected (together with the law of the Franks and Alemanni) by Theodoric I. and finally completed and promulgated by Dagobert. *Spelman.*

LEX BARBARA. The Barbarian law. A term applied to the law of those nations that were not in subjection to the Roman empire, such as the Burgundian and Salian law, the law of the Lombards, &c. *Spelman.*

LEX BREHONIA. L. Lat. The Brehon law of Ireland. See *Brehon law*.

LEX BRETOYSE. The law of the Britons or marches of Wales. See *Bretoyse*.

LEX BURGUNDIONUM. L. Lat. The law of the Burgundians, a barbarous nation of Europe, first compiled and published by Gundebald, one of the last of their kings, about A. D. 500. *Spelman. Esprit des Loix*, liv. 27, c. 1. *Bull. Hor. Jur.* 84.

LEX COMITATUS. L. Lat. In old English law. The law of the county, or the law administered in the county court, before the earl, (*comes*;) or his deputy, (*vice comes*.) *LL. Edw. Conf.* c. 12. *Spelman*.

LEX COMMUNIS. L. Lat. The common law. *Spelman*. See *Jus commune*.

LEX COMMISSORIA. Lat. In the Roman law. A law by which a debtor and creditor might agree, (where a thing had been pledged to the latter to secure the debt,) that if the debtor did not pay at the day, the pledge should become the absolute property of the creditor. 2 *Kent's Com.* 583. This was abolished by a law of Constantine. *Id. ibid. Cod.* 8. 35. 3.

A law, according to which, a seller might stipulate that if the price of the thing sold were not paid within a certain time, the sale should be void. *Dig.* 18. 3.

LEX CORNELIA DE INJURIIS. In the Roman law. The Cornelian law respecting injuries. A law passed by the dictator L. Cornelius Sylla, providing remedies for certain injuries; as for battery, forcible entry of another's house, &c. *Calv. Lex. Complementum, De Legibus Romanis. Hallifax, Anal.* b. 2, c. 25, num. 11.

LEX CORNELIA DE FALSO, (or FALSIS.) Lat. In the Roman law. The Cornelian law respecting forgery or counterfeiting. Passed by the dictator Sylla. *Dig.* 48. 10. *Calv. Lex. Complem.*

LEX CORNELIA DE SICARIIS ET VENEFICIS. Lat. In the Roman law. The Cornelian law respecting assassins and poisoners. Passed by the dictator Sylla. *Dig.* 48. 8. *Calv. Lex. Complem.*

LEX ET CONSUETUDO PARLIAMENTI. L. Lat. The law and custom of parliament. The peculiar law of the English or British Parliament, the whole of which, according to Sir W. Blackstone,

has its original from this one maxim, "that whatever matter arises concerning either house of parliament, ought to be examined, discussed and adjudged in that house to which it relates, and not elsewhere." 1 *Bl. Com.* 163. 4 *Inst.* 15. It was of this law that Lord Coke observed, that it was *ab omnibus querenda, à multis ignorata, à paucis cognita*, (to be examined by all; unknown to many; known by few.) *Co. Litt.* 11 b. *Crabb's Hist.* 263.

LEX ET CONSUETUDO REGNI. Lat. The law and custom of the realm. One of the names of the common law. *Hale's Hist. Com. Law*, 52.

LEX DANORUM. L. Lat. The law of the Danes; Dane-law, or Dane-lage. *Spelman*. See *Danelage*.

LEX DERAISINA. L. Lat. A branch of Norman law defined in the Coustumier, (c. 126,) to be a law established in Normandy, by which a party sued declares that he did not do the act with which he is charged by the adverse party. *Spelman*.

LEX DOMICILII. Lat. The law of the domicil. 2 *Kent's Com.* 112, 433.

LEX FALCIDIA. Lat. In Roman law. The Falcidian law; a law passed on the motion of the tribune P. Falcidius, A. U. 713, forbidding a testator to give more in legacies than three-fourths of all his estate, or, in other words, requiring him to leave at least one fourth to the heir. *Inst.* 2. 22. *Dig.* 35. 2. *Heinecc. Elem. Jur. Civ. lib.* 2, tit. 22.

LEX FORI. Lat. The law of the *forum* or court; the law of the place or state where a remedy is sought, or action instituted. *Story's Conf. Laws*, § 330. *Story on Bills*, § 160. Usually contrasted with *lex loci*, the law of the place where a contract is made. "Remedies upon contracts and their incidents are regulated and pursued according to the law of the place where the action is instituted, and the *lex loci* has no application." 2 *Kent's Com.* 462. "The remedies are to be governed by the laws of the country where the suit is brought; or, as it is compendiously expressed, by the *lex fori*." *Story, J. 8 Peters' R.* 361, 372. "So far as the law affects the remedy, the *lex fori*, the law of the place where that remedy is sought, must govern. But so far as the law of the construction, the legal operation and effect of the contract is concerned, it is governed by the law of the place where the contract is made." *Shaw, C. J. 4 Metcalf's R.*

594, 597. 6 *Florida R.* 555. See *Lex loci contractus*.

**LEX FRANCORUM.** L. Lat. The law of the Franks; promulgated by Theodoric I. son of Clovis I. at the same time with the law of the Alemanui and Bavarians. *Spelman*. This was a different collection from the Salic law.

**LEX FRISIONUM.** L. Lat. The law of the Frisians, promulgated about the middle of the eighth century. *Esprit des Loix*, liv. 28, c. 1. *Spelman*.

**LEX FURIA (or FUSIA) CANINIA.** Lat. In Roman law. The Furian (or Fusian) Caninian law; a law passed in the consulship of P. Fusius Camillus and C. Caninius Gallus, A. U. 752, prohibiting masters from manumitting by will more than a certain number or proportion of their slaves. This law was abrogated by Justinian. *Inst.* 1. 7. *Cod.* 7. 3. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 7.

**LEX GOTHICA.** L. Lat. The Gothic law, or law of the Goths. First promulgated in writing, A. D. 466. *Spelman*. See *Lex Wisigothorum*.

**LEX HOSTILIA.** Lat. In the Roman law. The Hostilian law; a law passed in the consulship of A. Hostilius and A. Atilius, authorizing actions of theft to be brought in the names of captives, or persons absent upon the business of the state. *Inst.* 4. 10, pr. *Calv. Lex. Compl. De Leg. Romanis*.

**LEX IMPERATORIA.** Lat. The Imperial or Roman law. Quoted under this name, by Fleta, lib. 1, c. 38, § 15. *Id.* lib. 3, c. 10, § 3.

**LEX JULIA MAJESTATIS.** Lat. In the Roman law. The Julian law of majesty; a law promulgated by Julius Cæsar, and again published with additions by Augustus, comprehending all the laws before enacted to punish transgressors against the state. *Hallifax, Anal.* b. 3, c. 12, num. 17. *Calv. Lex. Complementum, De Legibus Romanis*. See *Majestas*.

**LEX LOCI CONTRACTUS**, generally abbreviated to **LEX LOCI**. Lat. The law of the place of a contract; the law of the place where a contract is made, or is to be performed. "The *lex loci contractus* controls the nature, construction and validity of the contract." 2 *Kent's Com.* 454. *Story's Conf. Laws*, §§ 241, 263, *et passim*. *Story, J. 8 Peters' R.* 361, 372. "The general rule is well settled, that the law of the place where the con-

tract is made, and not where the action is brought, is to govern in expounding and enforcing the contract, unless the parties have a view to its being executed elsewhere; in which case, it is to be governed according to the law of the place where it is to be executed." *Thompson, J. 6 Peters' R.* 172, 203. "The *lex loci* acts upon the right; the *lex fori* on the remedy." 2 *Kent's Com.* 462. See *United States Digest*, *Lex loci*.

**LEX LOCI REI SITÆ.** L. Lat. The law of the place where a thing is situated. "It is equally settled in the law of all civilized countries, that real property, as to its tenure, mode of enjoyment, transfer and descent, is to be regulated by the *lex loci rei sitæ*." 2 *Kent's Com.* 429, 430.

**LEX LONGOBARDORUM.** L. Lat. The law of the Lombards. A code of laws first framed by Rotharis, about A. D. 620. *Spelman*. Said to be still in force in some cities of Italy. *Butler's Hor. Jur.* 85. The Lombards were of Saxon origin, which, according to *Spelman*, accounts for the analogies subsisting between their laws and the old laws of England. These laws are referred to in the Books of Feuds. *Lib.* 2, tit. 1.

**LEX MANIFESTA.** L. Lat. Manifest or open law; the trial by duel or ordeal. *Nullus balivus de cætero ponat aliquem ad legem manifestam, vel [nec] ad juramentum, simplici loquelâ suâ, sine testibus fidelibus ad hoc inductis*. No bailiff shall henceforth put any man to his open law, nor to an oath, upon his own bare saying, without competent witnesses brought in for that purpose. *Magna Charta*, 9 Hen. III. c. 28. The same with *lex apparens*, (q. v.) In King John's charter, (c. 38,) and the Articles of that charter, (c. 28,) the word *manifestam* is omitted.

**LEX MERCATORIA.** L. Lat. The law-merchant; the law or custom of merchants. A body of rules and usages by which the affairs of commerce are regulated; not peculiar to any one nation, but common in most respects to all.\* 1 *Bl. Com.* 75, 273.—The general body of European usages in matters relative to commerce. 1 *Steph. Com.* 54. It was introduced into England in the time of the Anglo-Saxons. 1 *Spence's Chancery*, 247. See 1 *W. Bl.* 238. Fleta speaks of the *consuetudo mercatorum* (custom of merchants) as being *secundum legem mercatoriam*, (in accordance with the law-merchant.) *Fleta*, lib. 2, c. 58, § 5. See *Custom of merchants*.

**LEX NON SCRIPTA.** Lat. Law not written; unwritten law; a law originating in custom, and having its force from long and immemorial usage.\* The term is applied to the common law of England, not in the literal sense of an unwritten or *oral* law, but in that of a law not derived from express legislative enactment. 1 *Bl. Com.* 63, 64, 67. Statutes made before the beginning of the reign of Richard I. are accounted part of the *lex non scripta*. *Hale's Hist. Com. Law*, 1, 2, 21. See *Leges non scriptæ*.

**LEX PAPIA POPPÆA.** Lat. In the Roman law. The Papian Poppæan law; a law proposed by the consuls Papius and Poppæus, at the desire of Augustus, A. U. 762, enlarging the *Lex Prætoria*, (q. v.) *Inst.* 3. 8. 2. *Hallifax, Anal.* b. 2, c. 10, num. 4.

**LEX PRÆTORIA.** Lat. In the Roman law. The Prætorian law. A law by which every freedman who made a will was commanded to leave a moiety to his patron. *Inst.* 3. 8. 1.

Lord Chief Baron Gilbert has applied this term to the rules that govern in a court of equity. *Gilbert's Chancery*, vol. or part 2.

**LEX REGIA.** Lat. In Roman law. The royal law. The law by which the legislative power was transferred (or claimed to be transferred) by the Roman people to the emperor; and according to which, the will or pleasure of the emperor was declared to have the force of law. *Inst.* 1. 2. 6. *Dig.* 1. 4. 1, pr. Whether such a law was ever actually passed, has been doubted. 1 *Kent's Com.* 544, note. The subject is discussed at length by Selden, in his *Dissertatio ad Fletam*, c. 3, sect. 2, 3, 4. And see *Taylor's Civil Law*, 236.

**LEX RHODIA.** Lat. The Rhodian law, particularly the fragment of it on the subject of jettison, (*de jactu*.) preserved in the Pandects. *Dig.* 14. 2. 1. 3 *Kent's Com.* 232, 233.

**LEX SALICA.** L. Lat. The Salic, Salique, or Salian law; the law of the Salians or Salian Franks, a people of Germany who, under their king Pharamond, settled in Gaul in the fifth century. It is the oldest of the barbarian codes, being said to have been framed about A. D. 422, by four chiefs or nobles chosen for the purpose, whose names have been preserved as Vio-gast, Bosogast, Salagast, and Vindigast. *Spelman. Esprit des Loix*, liv. 28, c. 1.

*Butler's Hor. Jur.* 83. The most celebrated provision of this law is the one excluding females from succession to inheritances. See *Terra Salica*. According to Spelman, many provisions of the laws of Henry I. of England were taken from this source.

**LEX SCRIPTA.** Lat. Written law; law deriving its force, not from usage, but from express legislative enactment; statute law. 1 *Bl. Com.* 62, 85. *Hale's Hist. Com. Law*, 1, 2. So called because originally reduced into writing before it is enacted or receives any binding power. *Id.* 2, 21.

The Roman law. *Feud. Lib.* 2, tit. 1.

**LEX TALIONIS.** Lat. The law of retaliation; a law which punished an injury by a similar injury, an eye for an eye, &c. See *Talio*.

**LEX TERRÆ.** L. Lat. In old English law. The law of the land; due process of law. *Bract.* fol. 127. *Nullus liber homo capiatur vel imprisonatur, aut dis-seisietur de libero tenemento suo, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruatur,—nisi per legale iudicium parium suorum, vel per legem terræ.* No free-man shall be taken or imprisoned, or dis-seised of his freehold, or of his liberties or free customs, or be outlawed, or exiled, or in any manner destroyed, unless it be by the lawful judgment of his peers, [the verdict of his equals, or men of his own condition,] or by the law of the land, [by the due course and process of law.] *Magna Charta*, c. 29. 2 *Inst.* 46.

Every lawful process and proceeding, in contradistinction to the mode of trial by jury. 1 *Reeves' Hist.* 249. 2 *Id.* 442, note.

In a stricter sense, trial by the ancient modes long known to the law of the land, as by the *lex manifesta*, the *juramentum*, *duellum*, or whatever it might be. 1 *Reeves' Hist.* 249.

In the strictest sense, trial by oath; the privilege of making oath. Bracton uses the phrase to denote a freeman's privilege of being sworn in court as a juror or witness, which jurors convicted of perjury forfeited, (*legem terræ amittant*.) *Bract.* fol. 292 b.

In a general sense, the general or common law of the land. *Bract.* fol. 17 b. The common law, or course of the common law. *Hale's Hist. Com. Law*, 52. See *Law of the land*.

LEX WALLENSICA. L. Lat. The Welsh law; the law of Wales. *Blount*.

LEX WISIGOTHORUM. L. Lat. The law of the Visigoths, or Western Goths who settled in Spain; first reduced to writing, A. D. 466. They were made by Euric, amended by Leovigildus, and confirmed by Chindaswindus and Recaswindus. A revision of these laws was made by Egigas. *Spelman. Esprit des Loix*, lib. 28, c. 1. See *Schmidt's Civil Law*, Introd. 24, 25.

LEY, *Lay, Lee, Leie, Ly*. L. Fr. [from Lat. *lex*.] Law. *Britt.* fol. 1. *Id.* c. 100, 103. *General rule de ley est.* *Id.* c. 121. *Ceo n'est ley*; this is not law. *Yearb. M.* 20 Hen. VI. 16. *Ceo serra merveillous ley*; this would be strange law. *Id.* T. 20 Hen. VI. 4. *Si ce' cas soit ley q' Newton ad mis, donc n'est question de la ley en nostre cas*; if this case be law, which Newton has put, then there is no question of the law in our case. *Id. ibid.* *Clere ley*; clear or undoubted law. *Kielw.* 51, 75, 198 b. *Il fuit ley avant c' q' no' fuim' nes, q', &c.*; it was law before we were born, that, &c. *Id.* M. 8 Edw. III. 35. *Le ley de Dieu et le ley de terre sont tout un*; the law of God and the law of the land are all one. *Keilw.* 191.

La ley voet plus tost suffer un mischeife que un inconvenience. The law will sooner suffer a mischief than an inconvenience. *Litt.* sect. 231. It is holden for an inconvenience that any of the maxims of the law should be broken, though a private man suffer loss. *Co. Litt.* 152 b.

Le ley favour' la vie d'un home. The law favours the life of a man. *Yearb. M.* 10 Hen. VI. 51.

Le ley favour l'enheritance d'un home. The law favours the inheritance of a man. *Id. ibid.*

LEY. L. Fr. In old English law. Law, in the technical sense of an oath, or the oath with compurgators. *Et si il tende sa ley au pleyntyfe, et il la refuse*; and if he tender his law to the plaintiff, and he refuse it. *Britt.* c. 27. *Et si il la receyve, si soit jour done al defendaunt que il veigne à un autre jour, à parfaire sa ley ove la dozyme meyn*; and if he receive it, a day shall be given to the defendant, that he come at another day, to perfect his law with the twelve-hand. *Id. ibid.* See *Id.* 51. *Prist à faire sa ley*; ready to make his law. *Yearb. T.* 5 Edw. III. 4. *La ley ne gist pas*; the law does not lie. *Id.* M. 1 Hen. VI. pl. 3. See M. 3 Hen. VI. 16.

LEY CIVILE. L. Fr. In old English law. The civil or Roman law. *Yearb.* II. 8 Edw. III. 42. Otherwise termed *ley escripte*, the written law. *Id.* 10 Edw. III. 24.

LEY GAGER. L. Fr. In old English law. Law-wager; wager of law; the giving of gage or security by a defendant, that he would make or perfect his law (*parfaire sa ley*.) at a certain day. *Litt.* sect. 514. *Co. Litt.* 294 b, 295 a. See *Ley*.

LEY. Span. [from *leyenda*, reading.] In Spanish law. Law; a written declaration which contains precepts, and decrees punishments, in order to restrain men from doing evil, and to teach them to do good. It is, moreover, called *law*, because all its commands should be loyal (*leales*) and equitable, conformably to justice and the will of God. *Las Partidas*, part. 1, tit. 1, l. 4.

LEYES DE ESTILO. Span. In Spanish law. A collection of laws, usually published as an appendix to the Fuero Real; treating of the mode of conducting suits, prosecuting them to judgment and entering appeals. *Schmidt's Civ. Law*, Introd. 74.

LEZ. L. Fr. Laws, (*leges*.) *Kelham*. Those, them, (*les*.) *Id.* The. *Id.* Nigh, near. *Id.*

LI. L. Fr. The; him; his. *Kelham*.

LIBEL. [from Lat. *libellus*, dimin. of *liber*, a book.] Literally, a little book, or writing. See *Libellus*.

A species of pleading in the ecclesiastical and admiralty courts. See *infra*.

A defamatory publication. See *infra*.

LIBEL. In admiralty practice. The first pleading in a suit, containing a statement of the case upon which the complaining party (hence termed the *libellant*.) founds his right to recover, closing with a prayer for the proper relief.\* *Benedict's Adm. Pr.* 208. 2 *Brown's Civ. & Adm. Law*, 357, 413, (Am. ed. 1840.)

LIBEL. In the practice of the ecclesiastical courts. The first pleading in a cause, containing a statement of the complainant's ground of complaint, and corresponding with a declaration at common law, and a bill in equity.\* 3 *Bl. Com.* 100. *Hallifax, Anal.* b. 3, c. 11, num. 7. 1 *Brown's Civ. & Adm. Law*, 461, 472, (Am. ed. 1840.)

LIBEL. [Lat. *libellus famosus*.] Written defamation. *Cooke's Law of Defama-*

tion, 1.—Defamation by writing, printing, pictures or other signs; a defamatory publication; a publication affecting character.\* —Any malicious defamation expressed either in printing, writing, pictures or effigies. 1 *Chitt. Gen. Pr.* 43.—Any act, other than spoken words, which sets a person in an odious or ridiculous light, and thereby diminishes his reputation.\* 3 *Bl. Com.* 125.—A censorious or ridiculing writing, picture or sign, made with a mischievous or malicious intent towards government, magistrates or individuals. Hamilton *arg.* in *The People v. Crosswell*, 3 *Johns. Cas.* 354. The last definition was adopted by the Supreme Court of New-York, in the case of *Steele v. Southwick*, 9 *Johns. R.* 214, 215, and recently approved by the same court. 1 *Denio's R.* 347. See 4 *Mass. R.* 168. 2 *Pick. R.* 111, 113. *United States Digest*, Libel. Lord Chancellor Lyndhurst lately remarked that he had never yet seen, nor been able himself to hit upon any thing like a definition of libel, which possessed the requisites of a good logical definition; and that he could not help thinking that the difficulty was not accidental, but essentially inherent in the nature of the subject matter. See *Cooke's Law of Defamation*, 482, Appendix, No. II.

\* \* The precise meaning of the word *libel* has been the subject of considerable discussion in the books, founded for the most part on the meaning claimed for the Latin word *libellus*, (literally, a *little book*;) from which it is unquestionably derived. In the case of *Rex v. Curl*, (2 *Stra.* 789, the pleadings then being in Latin,) it was argued for the defendant that the word *libellus* was so called from its being a *book*, and not from the matter of its contents; and the Chief Justice (Raymond) observed, "I do not think *libellus* is always to be taken as a technical word. Would not trover lie *de quodam libello intitulat'* (of a certain book, or little book, entitled) the New Testament?" Reynolds, J. in the same case said, "a libel does not, *ex vi termini*, import defamation, but is to be governed by the epithet which is added to it." Fortescue, J. however, was of opinion that *libel* was a technical word at the common law, and in this the court appear to have finally agreed. The misapprehension which has existed on this point seems to have grown out of the idea that *libel* was merely the English form of the Lat. *libellus*, (q. v.)

which, taken by itself, certainly radically imports a *little book*. But *libellus*, in the sense of an injurious publication, was never used in the Roman law without the epithet *famosus*, in which indeed the whole force of the term rested,—*famosus libellus* signifying a defamatory publication, a publication affecting character, (*fama*.) See *Dig.* 47. 10, *De injuriis et famosis libellis*. *Cod.* 9. 36, *De famosis libellis*. The term and its epithet were both transferred to the common law, and rendered in English, *scandalous libel*, *infamous libel*, &c. See 5 *Co.* 125 a, *De libellis famosis*. At some period, however, not very distinctly marked, the epithet began to be dropped, and the word *libel* has, by a sort of judicial license, or professional usage, come down to modern times as importing *in itself, and without epithet*, a defamatory publication; and this has become the settled popular meaning of the term. Perhaps, however, the proper view is to regard the epithet (*defamatory*) as *still understood*, and omitted only by way of abbreviation. Indeed, in pleading, it has generally been expressed, and in the late English Libel Act, 6 & 7 Vict. c. 96, the expression "defamatory libel" is constantly, though not invariably, used. See *Cooke's Law of Defamation*, 467, Appendix, No. I. And see *Id.* 482, Appendix, No. II. containing a report of the evidence of Lord Chancellor Lyndhurst before a committee of the House of Lords, in which the etymology of *libel* is placed in a clear light.

To LIBEL. In admiralty practice. To proceed against, by filing a libel; to seize under admiralty process, at the commencement of a suit. Applied most commonly to the seizure of vessels.

LIBELLANT. In admiralty practice. One who libels; one who proceeds by libel, or files a libel; the complaining party in an admiralty suit.

LIBELLUS. Lat. [dimin. of *liber*, a book.] In the Roman law. Literally a little book, as a memorandum or account book, (*libellus memorialis*, vcl. *rationalis*.) *Adam's Rom. Ant.* 559.

A writing divided into pages, (*paginae*;) and folded in the form of a little book; particularly a letter or message from the emperor to the senate; an application or request made to the emperor. *Id. ibid.* Julius Cæsar, in his letters to the senate, introduced the custom of dividing them into *pages*, and folding them up like a *small*

book; whereas, formerly, consuls and generals, when they wrote to the senate, used to continue the line quite across the sheet, (*transversâ chartâ*.) without any distinction of pages, and roll them up in a volume. *Suet. Cæs.* 56. Hence the use of *libellus* in the last sense.

A writing containing a complaint or claim against a person. Answering to a modern bill in equity. *Dig.* 2. 13. 1. *Cod.* 2. 2. 4.

A writing containing a formal accusation or complaint against a person, (*libellus accusatorius*.) *Dig.* 48. 5. 17. 1. *Id.* 48. 5. 29. 8.

A written application or petition to the emperor, (*libellus supplicis*.) *Dig.* 19. 2. 19. 9. *Tayl. Civ. Law*, 230.

An appeal, in writing, from the sentence of a judge, (*libellus appellatorius*.) *Dig.* 49. 1. 1. 4.

**LIBELLUS.** Lat. In civil and old English law. A libel; a claim, in writing, of what is due to one. *Calv. Lex.*—The plaintiff's claim in an action; a bill of complaint.\*—A writing containing the name of the plaintiff and the defendant, the subject which is demanded, and the ground of the demand. *Calv. Lex.* Otherwise termed *libellus conventionis*, (libel of convention or suit.) *Inst.* 4. 6. 24. Bracton seems to have borrowed the latter phrase in the following passage: *Nemo sine actione experitur, et hoc non sine breve sive libello conventionali*; no man tries his right [no man can get his claim legally determined] without action, and this cannot be without a writ or libel of suit, [bill.] *Bract. fol.* 112. The term *libellus conventionalis* may here not improperly be rendered *bill*; the two-fold procedure of the ancient practice,—"by writ" and "by bill,"—being thus clearly indicated.

**LIBELLUS.** Lat. In feudal law. An instrument of alienation or conveyance, as of a fief, (*feudum*.) or a part of it. *Feud. Lib.* 1, tit. 13. *Id. Lib.* 2, tit. 44.

**LIBELLUS FAMOSUS.** Lat. In the civil law. A defamatory publication; a publication injuriously affecting character; a libel. *Inst.* 4. 4. 1. *Dig.* 47. 10. *Cod.* 9. 36.

This term was introduced into the law of England as early as the time of Bracton, and is used by Lord Coke in the title of one of the cases in his reports. *Bract. fol.* 105. 5 *Co.* 125. In the civil law, the epithet *famosus* is almost uniformly

coupled with *libellus*. Sometimes the expression is *libellus ad infamiam*. *Inst.* 4. 4. 1.

**LIBER.** Lat. A book; a collection of law. See *infra*.

A distinct part or principal division of a work. The Institutes, Code and Digests are divided into *libri*, (books,) which are again divided into *tituli*, (titles.)

**LIBER.** Lat. In the Roman law. A book. *Librorum appellatione continentur omnia volumina, sive in charta, sive in membrana sint, sive in quavis alia materia*; under the application of *books* are included all volumes, whether written on paper, or on parchment, or on any other material. *Dig.* 32. 52, pr. et per tot.

**LIBER ASSISARUM.** L. Lat. The Book of Assises. A collection of cases that arose on assises and other trials in the country. It was the fourth volume of the reports of the reign of Edward III. 3 *Reeves' Hist.* 148. It is the fifth part of the published series of the Year Books.

**LIBER FEUDORUM.** L. Lat. The Book of Feuds or Fiefs. *Crabb's Hist.* 70. Properly, *Libri Feudorum*; the collection consisting of two books. See *Feudorum Libri*.

**LIBER JUDICIALIS.** L. Lat. Judgment book, or Dome book. 1 *Bl. Com.* 64. See *Dome book*.

**LIBER NIGER.** Lat. Black book. A name given to several ancient records. See *Black book*.

**LIBER NIGER SCACCARII.** L. Lat. The Black Book of the Exchequer, attributed to Gervase of Tilbury. 1 *Reeves' Hist.* 220, note.

**LIBER RUBER SCACCARII.** L. Lat. The Red Book of the Exchequer. 1 *Reeves' Hist.* 220, note. See *Red book*.

**LIBER.** Lat. In old English law. Free. See *infra*.

A freeman. *Fleta*, lib. 4, c. 11, § 23.

Exempt from the power or jurisdiction of another; exempt from a general charge or burden; exempt from a servitude or service. *Fleta*, lib. 4, c. 18, § 1.

Exclusive of a common right; privileged. See *infra*.

**LIBER BANCUS.** L. Lat. In old English law. Free bench. *Bract. fol.* 97 b.

**LIBER HOMO.** Lat. In the civil law. A freeman. *Omnes homines aut liberi sunt aut servi*; all men are either

free or slaves. *Inst.* 1. 3, pr. See *Fleta*, lib. 1, c. 1, § 2. Liber homo *bonâ fide serviens*; a freeman serving in good faith. *Dig.* 41. 1. 19.

In old English law. A freeman. *Omnis homo aut est liber aut est servus*; every man is either free or a slave. *Bract.* fol. 4 b. *Omnis homo aut est omnino liber, aut omnino servus, nec habetur medium*; every man is either wholly free, or wholly a slave, nor is there a medium. *Fleta*, lib. 4, c. 11, § 22. The term *liber homo*, however, did not import freedom in the modern sense, for a man might be another's freeman, as well as another's slave. *Poterit quis esse servus unius, et liber homo alterius.* *Bract.* fol. 25. *Magna Charta* distinguishes the *liber homo* from the *mercator*, (merchant,) and the *villanus*, (villein.) *Mag. Cart.* 9 Hen. III. c. 14.

In old European law. An allodial proprietor, as distinguished from a vassal or feudatory. This was the sense of the term in the laws of the barbarous nations of Europe. 1 *Rob. Charles V.* 177.

LIBER ET LEGALIS HOMO. L. Lat. In old English law. A free and lawful man. A term applied to a juror, from the earliest period. *Bract.* fol. 14 b, 179 b. *Fleta*, lib. 4, c. 5, § 4. *Id.* lib. 6, c. 25, § 4. *Co. Litt.* 155 a. 3 *Bl. Com.* 340, 362.

LIBERA. Lat. [fem. of *liber*.] Free. See *infra*.

LIBERA BATELLA. L. Lat. In old records. A free boat; the right of having a boat to fish in a certain water; a species of free fishery. *Plac. in Itin. apud Cestriam*, 14 Hen. VII.

LIBERI CHASEA, (or CHACIA.) L. Lat. In old English law. A free chase. *Reg. Jud.* 37. *Fleta*, lib. 2, c. 41, § 51.

LIBERA ELEEMOSYNA. L. Lat. In old English law. Free alms; frank-almoign. *Bract.* fol. 27 b.

LIBERA FALDA. L. Lat. In old English law. Frank fold; free fold; free foldage. 1 *Leon.* 11.

LIBERA LEX. L. Lat. In old English law. Frank law; free law; otherwise called *lex terræ*, (q. v.) Called *libera*, according to Lord Coke, to distinguish men who enjoy it, and whose best and freest birthright it is, from them that by their offences have lost it. *Co. Litt.* 94 b. *Amittere liberam legem*, (q. v.;) to lose

one's frank-law. 3 *Bl. Com.* 340. 4 *Id.* 136. *Crabb's Hist.* 318, 319. *Co. Litt.* 294 b. *Fleta*, lib. 4, c. 8, § 2.

LIBERA PISCARIA. L. Lat. In old English law. A free fishery. *Co. Litt.* 122 a. See *Free fishery*.

LIBERA WARRENA. L. Lat. In old English law. Free warren, (q. v.)

LIBERARE. Lat. In the civil law. To free or set free; to liberate; to give one his liberty. *Calv. Lex.*

In old English law. To deliver, transfer, or hand over. Applied to writs, panels of jurors, &c. *Bract.* fol. 116, 176 b. *Stat. Westm.* 2, c. 39.

*Liberata pecunia non liberat offerentem.* Delivered or tendered money does not release the party offering. *Co. Litt.* 207 a. The word, in this passage, has both its classical and its technical sense.

LIBERATE. L. Lat. In old English practice. An original writ issuing out of chancery to the treasurer, chamberlains and barons of the exchequer, for the payment of any annual pension, or other sum. *Reg. Orig.* 193. *Cowell.*

A writ issued to a sheriff, for the delivery of any lands or goods taken upon forfeits of recognizance. 4 *Co.* 64 b, *Fulwood's case*.

A writ issued to a gaoler, for the delivery of a prisoner that had put in bail for his appearance. *Cowell.*

LIBERATIO. Lat. In the civil law. Acquittance or discharge; payment, (*solutio*.) *Liberationis verbum candem vim habet quam solutionis.* *Dig.* 50. 16. 47. A release. *Id.* 46. 3. *Cod.* 8. 43.

LIBERATIO. L. Lat. In old English law. Livery; money paid for the delivery or use of a thing. *Nisi reddat liberationem antiquitus statutam*; unless he pay the livery ordained of old. *Magna Charta*, 9 Hen. III. c. 21.

In old Scotch law. Livery; a fee given to a servant or officer. *Leg. Malc. Mackenneth*, c. 4. *Skene de Verb. Sign.*

LIBERE. Lat. Freely. A formal word in old conveyances. *Bract.* fol. 35. *Tenere liberè*; to hold freely. These words, in a gift of land to a villein, had the effect of making him a freeman. *Id.* fol. 24 b. *Fleta*, lib. 3, c. 13, § 1.

LIBERI. Lat. In Saxon law. Free-men; the possessors of allodial lands. 1 *Reeves' Hist. Eng. Law*, 5.

LIBERI. Lat. In the civil law. Children. The term included grandchildren

and their descendants. *Dig.* 50. 60. 220, pr. *Inst.* 1. 14. 5.

**LIBERI HOMINES.** Lat. In civil and old English law. Freemen. *Omnes homines aut liberi sunt, aut servi.* *Inst.* 1. 3. pr. See *Liber homo*.

Owners of land. So translated in *Wright on Tenures*, 66, and note.

**LIBERTAS.** Lat. In civil and old English law. Liberty; freedom. *Libertas est naturalis facultas ejus quod cuique facere libet, nisi si quid vi aut jure prohibetur*; liberty is the natural power of doing whatever one pleases, except what is prohibited by force or law. *Dig.* 1. 5. 4, pr. This definition was taken from the ninth book of the Institutes of Florentinus, and was adopted in the Institutes of Justinian, without change, except that some copies have *quod*, instead of *si quid*. *Inst.* 1. 3. 1. Bracton has adopted the definition of the civil law, with a slight modification, thus: *Est autem libertas naturalis facultas ejus quod cuique facere libet, [quod voluerit,] nisi quod de jure vel vi prohibetur.* *Bract.* fol. 46 b. Fleta has followed Bracton nearly *verbatim*, omitting the words *quod voluerit*, which appear to be interpolated. *Fleta*, lib. 1, c. 2. Lord Coke copies *Fleta*. *Co. Litt.* 116 b. See *Civil liberty*.

**Libertas inestimabilis res est.** Liberty is an inestimable thing; a thing above price. *Dig.* 50. 17. 106. *Fleta*, lib. 2, c. 51, § 13.

**Libertas non recipit æstimationem.** Freedom does not admit of valuation. *Bract.* fol. 14.

**Libertas omnibus rebus favorabilior est.** Liberty is more favored than all things, [any thing.] *Dig.* 50. 17. 122.

**Quoties dubia interpretatio libertatis est, secundum libertatem respondendum est.** Whenever the interpretation of liberty is a matter of doubt, the answer must be in favor of liberty. *Dig.* 50. 17. 20.

**In obscura voluntate manumittentis, favendum est libertati.** Where the will of a person manumitting is obscure, we should lean to the side of liberty. *Dig.* 50. 17. 179.

**LIBERTAS.** L. Lat. In old English law. A liberty; a privilege; an exemption; a franchise. *Bract.* fol. 55 b, 56. *Fleta*, lib. 2, c. 67, § 13. See *Liberty, Franchise*.

**LIBERTATES.** Lat. Liberties. This word in *Magna Charta* signifies, according to Lord Coke,

1. The laws of the realm.

2. The freedom that the subjects of England have.

3. The franchises and privileges which the subjects have of the gift of the king. *Mag. Chart.* c. 29. 2 *Inst.* 47.

**LIBERTINUS.** Lat. In the civil law. A freed-man; one who was manumitted from lawful servitude. *Dig.* 1. 5. 6. *Inst.* 1. 5, pr. See *Tayl. Civ. Law*; 429, 430.

**LIBERTUS.** Lat. In the civil law. A freed-man. *Inst.* 3. 8. Used indifferently with *libertinus*, (q. v.) See *Tayl. Civ. Law*, 429, 430.

**LIBERTY.** See *Civil liberty*.

**LIBERTY.** [Lat. *libertas*; L. Fr. *franchise*.] In English law. A privilege held by royal grant or prescription, whereby men enjoy some benefit or favor beyond the ordinary subject. *Cowell*. A franchise, (q. v.) 2 *Bl. Com.* 37. Such were the old liberties of Soke and Sake, Toll and Them, Infangthefe and Outfangthefe, &c. *Bract.* fol. 56. Bracton describes them as privileges, which, though properly belonging to the crown, yet could be separated from the crown, and transferred to private persons by the special favor of the sovereign. *Id.* fol. 55 b.

A privilege allowed to be exercised over another man's estate. "A man's right of dominion over his own estate is never called a liberty." Lord Ellenborough, 10 *East*, 189.

A place or district within which certain exclusive privileges may be exercised; a place of exclusive jurisdiction.\* 2 *Bl. Com.* 37, 38. See 2 *Mod.* 48, 49.

**LIBERUM.** Lat. Free. See *infra*.

**LIBERUM CORPUS.** Lat. A free body; the body or life of a freeman. *Librum corpus nullam recipit æstimationem.* *Dig.* 9. 3. 7. Otherwise, *Librum corpus æstimationem non recipit*. The body of a freeman does not admit of valuation; the life of a freeman is above all valuation. 3 *Kent's Com.* 365.

**LIBERUM MARITAGIUM.** L. Lat. In old English law. Frank-marriage. *Bract.* fol. 21. See *Frank-marriage*.

**LIBERUM SERVITIUM.** L. Lat. In old English and feudal law. Free service; that is, certain service. *Per liberum servitium unius denarii per annum*; by the free service of one penny yearly. *Reg. Orig.* 1. A villein might hold by this kind of service, without its conferring freedom.

*Bract.* fol. 24 b. *Fleta*, lib. 3, c. 13, § 1. See *Free services*.

**LIBERUM SOCAGIUM.** L. Lat. In old English law. Free socage. *Bract.* fol. 207. 2 *Bl. Com.* 61, 62. See *Free socage*.

**LIBERUM TENEMENTUM.** L. Lat. In old English law. Freehold; free or frank tenement; a free holding; an estate held by a freeman.\* *Bract.* fol. 18, 26, 31, 45. 2 *Bl. Com.* 104. 4 *Kent's Com.* 23. An estate in fee, for life, or other indeterminate period. *Bract.* fol. 207, 224. So called in contradistinction to *villenagium*, (villeinage.) *Id. ibid.*

In pleading. A plea of freehold. A plea by the defendant in an action of trespass to real property, that the *locus in quo* is his freehold, or that of a third person, under whom he acted. 1 *Tidd's Pr.* 645. See *Steph. Pl.* 315. 1 *Chitt. Pl.* 503. 1 *Greenl. on Evid.* § 626.

**LIBRA.** Lat. [Sax. *punde.*] In old English law. A pound. *Spelman.* *Viginti denarii fac' unciam, et duodecim uncie faciunt libram viginti solid' in pondere et numero*; twenty pennies make an ounce, and twelve ounces make a pound in weight and in number. *Fleta*, lib. 2, c. 12, § 1. See *Pound*.

**LIBRA ARSA.** L. Lat. In old English law. A pound burned; that is, melted, or assayed by melting, to test its purity. *Libra arsæ et pensatæ*; pounds burned and weighed. A frequent expression in Domesday, to denote the purer coin in which rents were paid. *Spelman.* *Cowell.*

**LIBRA NUMERATA.** L. Lat. In old English law. A pound counted; that is, paid or reckoned by tale, (*ad numerum*), instead of being weighed. *Spelman.*

**LIBRA PENSA, (or PENSATA.)** L. Lat. In old English law. A pound weighed, or tried by weight. *Spelman.* See *Libra arsa*.

**LIBRARIUS.** Lat. In the Roman law. A writer or amanuensis; a copyist. *Dig.* 50. 17. 92. See *Calv. Lex.*

**LIBRATA.** L. Lat. [from *libra*, a pound.] In old English law. A quantity of land yielding a pound rent per annum; a pound-land.\* *Bract.* fol. 16. *Reg. Orig.* 1 b, 94. *Fleta*, lib. 5, c. 5, 41. *Cowell*, voc. *Fardingdeal*.

**LIBRIPENS.** Lat. In the Roman law. A weigher, or balance-holder. The person who held a brazen balance in the ceremony of emancipation *per æs et libram.* *Inst.* 2. 10. 1. *Adam's Rom. Ant.* 52.

**LI. LO.** An abbreviation of *licentia loquendi*, formerly used in practice to signify an imparlance. *Towns. Pl.* 159.

**LICENSE.** [Lat. *licentia.*] Permission; authority. Marshall, C. J. 9 *Wheaton's R.* 213. A grant of permission; a power or authority given to another to do some lawful act. *Wharton's Lex.* As to carry on certain trades; to practice a profession; and, in England, to marry without publication of banns. 1 *Bl. Com.* 439. 2 *Steph. Com.* 286.

An authority to do a particular act, or series of acts, upon another's land, without possessing any estate therein. 3 *Kent's Com.* 452. Distinguished from an easement. *Id. ibid.*

**LICENTIA.** Lat. [from *licere*, to be lawful.] License; liberty; permission. See *infra*.

**LICENTIA CONCORDANDI.** L. Lat. In old practice and conveyancing. License or leave to agree; one of the proceedings on levying a fine of lands. 2 *Bl. Com.* 350. See *Fine of lands*.

**LICENTIA LOQUENDI.** L. Lat. In old practice. Leave to speak, [i. e. with the plaintiff;] an imparlance; or rather leave to imparl. 3 *Bl. Com.* 299. See *Imparlance*.

**LICENTIA SURGENDI.** L. Lat. In old English practice. License to arise; permission given by the court to a tenant in a real action who had cast an essoin *de malo lecti*, to arise out of his bed; which he could not do without such permission, and after being viewed by four knights appointed for the purpose. *Bract.* fol. 355. *Id.* 353—359. *Fleta*, lib. 6, c. 11, § 1.

The name of the writ issued in such cases. *Reg. Orig.* 8 b.

**LICENTIA TRANSFRETANDI.** L. Lat. In old English law. Leave to cross the sea; permission to cross the Strait of Dover, (*transire fretum.*) *Reg. Orig.* 193 b. See *De licentia transfretandi*.

**LICERE.** Lat. To be lawful; to be allowed or permitted by law. *Calv. Lex.*

**LICERE, LICERI.** Lat. In the Roman law. To offer a price for a thing; to bid for it. The buyer or bidder asked, "*Quanti licet?*" (for how much may I have it?) *Adam's Rom. Ant.* 251.

**LICET.** Lat. It is lawful; it is allowable; it is permitted. *Non omne quod licet honestum est.* [It is] not every thing that is lawful, [that] is becoming. *Dig.* 50. 17. 144. *Non debet, cui plus licet, quod minus*

*est, non licere.* It ought not [to be] that he who is allowed to do the greater, shall not be allowed to do the less. *Id.* 50. 17. 21.

**LICET.** Lat. Although. Held to import a direct affirmation. *Dyer*, 113 b. *Plowd.* 122 a, 125 a, 127 a. 3 *Leon.* 67, case 99.

*Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu.* Although a grant of a future interest be inoperative, yet a declaration precedent may be made, which may take effect provided a new act intervene. *Bacon's Max.* 60, 61, reg. 14.

**LICET SÆPIUS REQUISITUS.** L. Lat. (Although often requested.) In pleading. A phrase used in the old Latin forms of declarations, and literally translated in the modern precedents. *Yelv.* 66. 2 *Chitt. Pl.* 90. 1 *Id.* 331. The clause in a declaration, which contains the general averment of a request by the plaintiff of the defendant to pay the sums claimed, is still called the *licet sæpius requisitus*. *Id.* See 5 *Ohio St. R.* 87.

**LICITARE.** Lat. [frequent. of *licere*, q. v.] In the Roman law. To offer a price at a sale; to bid; to bid often; to make several bids, one above another. *Calv. Lex.*

**LICITATION.** [Lat. *licitatio*, from *licitare*, q. v.] In the civil law. An offering for sale to the highest bidder, or to him who will give most for a thing. An act by which co-heirs or other co-proprietors of a thing in common and undivided between them, put it to bid between them, to be adjudged and to belong to the highest and last bidder, upon condition that he pay to each of his co-proprietors a part in the price equal to the undivided part which each of the said co-proprietors had in the estate *licited*, before the adjudication. *Pothier, Contr. of Sale*, num. 516, 638.

**LICITATOR.** Lat. [from *licitare*, q. v.] In the Roman law. A bidder at a sale. See *Licere*.

**LICITUM.** Lat. [from *licere*, to be lawful.] Lawful; permitted by law.

*Licita bene miscetur, formula nisi juris obstat.* Lawful acts [done by several authorities] are well mingled, [i. e. become united or consolidated into one good act,] unless some form of law forbid. *Bacon's Max.* 94, reg. 24. "The law giveth that favor to lawful acts, that although they be executed by several authorities, yet the

whole act is good. As if tenant for life, the remainder in fee, be, and they join in granting a rent, that is *one solid* rent out of both their estates, and no double rent, or rent by confirmation." *Id. ibid.*

Lord Bacon's exposition of this maxim sufficiently explains its meaning; but its very elliptical form has sometimes led to mis-translation. See *Branch's Princ. Whar-ton's Lex.*

**To LIE.** [L. Lat. *jacere*, q. v.] In practice. To be applicable; to be proper to be used. An action is said to *lie* in a case in which it may properly be brought. 3 *Steph. Com.* 460.

**To LIE IN.** To be capable of; to be the subject or subject matter of. Corporeal hereditaments must at common law pass by force of the livery of seisin, or actual delivery of possession, and are hence said to *lie in livery*. Incorporeal hereditaments, not being capable of livery, pass by the mere delivery of the deed of conveyance, or grant, and are hence said to *lie in grant*. 2 *Bl. Com.* 317. 1 *Steph. Com.* 474. 2 *Hilliard's Real Prop.* 297.

To consist in. Rent, which is yielded or paid as a thing due, is said to *lie in render*; common, which the party entitled to is to take for himself, is said to *lie in prender*. 2 *Steph. Com.* 23. See *Render, Prender*.

**To LIE TO.** [L. Lat. *adjacere*.] To adjoin. A cottage must have had four acres of land *laid to* it. See 2 *Show.* 279.

**LIEFTENANT.** An old form of *lieutenant*, and still retained as the vulgar pronunciation of the word. The form is important as showing the easy convertibility of the letter *u* into *f*, which has been noticed in other places. See *Fief, Fee*.

**LIEGE.** [L. Fr. *liege, lige*; L. Lat. *ligius*, from Lat. *ligare*, to bind; Ital. *liga*, a bond.] In feudal and English law. Bound; bound in fealty to a lord; bound to that exalted kind of fealty which was without any saving of the rights of other lords, and hence called *ligeance* or allegiance; bound to serve the king as lord paramount. The feudatory or subject thus bound was called *liege man*, and the superior (who was considered as reciprocally bound to the duty of protection,) *liege lord*, though the simple word *liege* was also commonly applied to both. See *Ligius*, and *infra*.

A liege lord; the king as sovereign lord. See *supra*. "My liege" was the usual expression in addressing the sovereign.

A liege-man. See *supra*. The "king's lieges" are his subjects. This term is still used in Scotch law. 1 *Brown's R.* 508. *Arkley's R.* 440. Anciently, private persons had their lieges. *Blount*.

LIEGE. [L. Fr. *lige*; L. Lat. *ligius*.] In old records. Full; absolute; perfect; pure. *Liege* widowhood was pure widowhood. *Paroch. Ant.* 190. *Cowell*.

In Scotch law. Lawful. See *Liege poustie*.

LIEGE HOMAGE. In feudal law. That kind of homage which is due to the sovereign alone, as supreme lord. 1 *Bl. Com.* 367. See *Homagium ligium*.

LIEGE LORD. A sovereign lord; the sovereign. *Spelman*, voc. *Ligantia*.

LIEGE MAN. A subject, (*subditus*.) *Spelman*, voc. *Ligantia*.

LIEGE POUSTIE. In Scotch law. Lawful power; a state of health which gives a person lawful power of disposition by will. *Bell's Dict.* A *liege poustie* conveyance is a deed executed when the grantor is in health, and capable of giving his heritage to whom he pleases. It is used in this sense in contradistinction to a *death-bed* deed. *Id.* voc. *Approbate and reprobate*. The term appears to be a corruption or accommodation of *ligia potestas*, (q. v.)

LIEN. L. Fr. [from *lier*, *liger*, to tie.] In old English law. A bond or tie. *Homage est un lien de droit dount home est lie et tenus*; homage is a bond of right whereby a man is bound and holden. *Britt.* c. 68. *Obligacion est un lien de droit, dount ascun est lie, &c.*; obligation is a bond of right whereby one is bound, &c. *Id.* c. 28.

LIEN. [L. Fr. *lien*, see *supra*.] A right to possess and retain property, until some charge attaching to it is paid or discharged. 1 *Story's Eq. Jur.* § 506. See 2 *Steph. Com.* 132.—A right in one man to retain that which is in his possession belonging to another, until certain demands of him, the person in possession, are satisfied. *Story on Agency*, § 352, citing *Grose*, J. 5 *East's R.* 227, 235. 2 *Story's R.* 144. A lien is not in strictness either a *jus in re*, or a *jus ad rem*; that is, it is not a property in the thing itself, nor does it constitute a right of action for the thing. It more properly constitutes a charge upon the thing. *Story*, J. 2 *Story's R.* 145. 1 *Story's Eq. Jur.* § 506. See *Cross on Lien*, 2. *United States Digest*, Lien.

In maritime law, liens exist indepen-

dently of possession, either actual or constructive. *Grier*, J. 7 *Howard's R.* 618.

LIER, *Lyer*. L. Fr. [from Lat. *ligare*, to tie, or bind.] To bind. *Lie*; bound. *Britt.* c. 28, 68. *Aceo lies*; bound thereto. *Art. sup. Chart.* c. 11. *Le Roy est lie par son serment à faire ses liges droit*; the king is bound by his oath to do his lieges justice. *Yearb.* H. 8 Hen. VI. 6.

LIER. L. Fr. [from Lat. *legere*.] To read. *A lier*; to be read. *Art. sup. Chart.* c. 1. *Lee*; read. *Yearb.* M. 4 Edw. III. 5.

LIEU, *Leu*, *Liu*, *Lyu*. L. Fr. [from Lat. *locus*.] A place. *Britt.* c. 27.

LIEU CONUS. L. Fr. In old pleading. A known place; a place well known and generally taken notice of by those who dwell about it, as a castle, a manor, &c. *Whishaw*. 1 *Ld. Raym.* 259. "A liberty is in the nature of a *lieu conus*." *North*, C. J. 2 *Mod.* 48.

LIEUTENANT, LIEU TENANT. L. Fr. One holding the place of another; a representative, deputy or substitute. *Et que le mareschal de nostre hostel tiegne nostre lieu dedans la verge, &c.*; and that the marshal of our household hold our place within the verge, &c. *Britt.* fol. 1 b. See *Locum tenens*.

LIFE ANNUITY. An annual income, the payments of which depend on the continuance of any given life or lives. *Wharton's Lex.* See 3 *Kent's Com.* 460. *Ellis on Fire and Life Insurance*.

LIFE ASSURANCE, (or INSURANCE.) A species of insurance, by which the insurer, in consideration of a sum in gross, or of periodical payments, undertakes to pay a certain sum, or an annuity, depending upon the death of a person whose life is insured. 3 *Kent's Com.* 365. See *Angell on Fire and Life Ins.* c. 12, § 274. See *Insurance, Life policy*.

LIFE POLICY. A policy which usually engages, that in consideration of a periodical payment of premium, the company will pay, on the death of some individual, or on his death within a limited period, (as the case may be,) a certain sum of money therein specified; that is, will pay it to the party effecting an insurance, (supposing it to be effected by a stranger having an interest in the life insured,) or to the executors or administrators of the party whose life is insured, supposing him to effect it for his own benefit. 2 *Steph. Com.* 180, 181. See *Ang. on Fire and Life Ins.* c. 12, § 284.

**LIFE ESTATE.** An estate held for the life of the party holding it, or of some other person; a freehold estate, not of inheritance.\* 4 *Kent's Com.* 23, 25. See *Estate for life*.

**LIFE-RENT.** In Scotch law. An estate for life. *Bell's Dict.* Terce (dower) and curtesy are called legal life-rents. *Id. ibid.* 1 *Forbes' Inst.* part 2, p. 144, 145.

**LIFE-RENTER.** In Scotch law. A tenant for life. A person entitled to use and enjoy a subject during life, without destroying or wasting its substance. *Bell's Dict.*

**LIGA.** L. Lat. In old European law. A league or confederation, (*fædus, confederatio*.) *Spelman.*

**LIGAMEN.** Lat. [from *ligare*, to tie.] In old English law. A bond or tie. *Dissolvi co ligamine quo ligatum est*; to be dissolved by the same tie with which [in the same manner in which] it was bound. *Bract.* fol. 78 b.

**LIGAN.** [from *ligare*, to tie.] In old English law. Goods sunk in the sea, but tied to a cork or buoy, in order to be found again. 5 *Co.* 106. 1 *Bl. Com.* 292. *Jacobsen's Sea Laws*, 541.

*Spelman* writes this word *lagon*, and derives it from the Sax. *liggan*, to lie, signifying that which *lies* on or near the shore. *Lagan*, (q. v.) is used in *Bracton*.

**LIGARE.** Lat. To tie, or bind. *Bract.* fol. 369 b.

To enter into a league or treaty, (*inire fædus*.) *Spelman.*

**LIGEA.** L. Lat. In old English law. A liege-woman; a female subject. *Reg. Orig.* 312 b.

**LIGEANCE, Ligeancy.** [from L. Lat. *ligantia, ligiantia*.] In old English law. The bond of fidelity between the subject and sovereign, (*vinculum arctius inter subditum et regem, utrosque invicem connectens*.) *Spelman*.—The duty of obedience and fidelity which a subject owes to his sovereign.\* *Cowell. Blount*.—The true and faithful obedience of a liegeman or subject to his liege lord or sovereign. *Co. Litt.* 129 a. The old form of *allegiance*, (q. v.)

The dominions or territory of the king. *Stat. 25 Edw. III. st. 2*. An alien is a subject that is born out of the ligeance of the king, and under the ligeance of another. 7 *Co.* 16 a, *Calvin's case*.

**LIGIANTIA, Ligeantia.** L. Lat. [from *ligare*, to bind.] In old English, Norman

and Scotch law. Ligeance or allegiance. *Glanv.* lib. 7, c. 10. *Reg. Maj.* lib. 2, c. 44. *Skene de Verb. Sign.* *Grand Coutum. Norm.* c. 43. *Spelman*.

**LIGHT.** [Lat. *lumen*.] A right to have the access of the sun's rays to one's windows, free from any obstruction by the occupier of the adjoining land. 2 *Steph. Com.* 13. 3 *Kent's Com.* 448. 2 *Hilliard's Real Prop.* 81. See *Ancient lights, Lumen*.

**LIGIUS.** L. Lat. [from *ligare*, to bind.] In old English and European law. Bound; bound to fidelity, fealty or obedience; liege; a liege; a subject. *Spelman*.

Lawful; perfect. *Ligia potestas*; lawful power, full capacity in law, absolute power of disposal. *Fleta*, lib. 6, c. 33, § 3. *Cowell*, voc. *Liege*. *Ligia viduitas*; pure widowhood. *Id. Fleta*, lib. 5, c. 37, § 5. *Britt.* c. 110.

**LIGNAGIUM.** L. Lat. [from *lignum*, wood.] In old English law. A right to cut fuel in woods. *Whishaw*.

**LIGNE.** L. Fr. Line. *La ligne collatérale, et non pas la ligne droite*. *Grand Coust. de Norm.* ch. 25, gloss. *Blackst. L. Tr.* 25.

Sex. *Britt.* c. 119. *Kelham*.

**LIGNUM.** Lat. [Gr. ξύλον.] In the civil law. Wood; fire-wood; any thing prepared for burning, (*quicquid comburendi causâ paratum est*.) *Dig.* 32. 55, pr. It was distinguished from *materia*, material for building; timber. *Id. ibid.* See *Id.* per tot. for the construction of the word.

In old English law. Dead wood, or wood cut, as distinguished from *arbor*. See *Arbor*.

**LIGULA.** L. Lat. In old English law. A copy, exemplification or transcript of a court-roll or deed. *Cowell*.

**LIMENARCHA.** Græco-Lat. In the Roman law. An officer who had charge of a harbor or port, (Gr. λιμην.) *Dig.* 50. 4. 18. 10. *Cod.* 7. 16. 38.

**LIMITARE.** Lat. [from *limes*, a bound.] In old English law. To limit; to fix a boundary or period. *Hodie fere omnes [actiones] infra certa tempora limitantur*; at this day almost all actions are limited within certain periods. *Bract.* fol. 102 b.

**LIMITATIO.** Lat. [from *limitare*, q. v.] In old English law. Limitation; a limitation. *Omnes actiones in mundo infra certa tempora habent limitationem*; all actions in the world have a limitation within certain periods of time. *Bract.* fol. 52.

**LIMITATION.** [from Lat. *limitatio*, q. v.] A setting a bound or limit; a fixing a period.

**LIMITATION OF ACTIONS.** The restriction, by statute, of the right of action to certain periods of time, beyond which, except in certain specified cases, it will not be allowed. The statutes fixing such periods or limits are termed *statutes of limitation*, (q. v.) See *Angell on Limitation. United States Digest, Limitation of Actions.*

**LIMITATION OF ASSISE.** In old practice. A certain time prescribed by statute, within which a man was required to allege himself, or his ancestor, to have been seised of lands sued for by a writ of assise. *Cowell.*

**LIMITATION OF ESTATE.** The definition or circumscription in any conveyance, of the interest which the grantee is intended to take. 1 *Steph. Com.* 278, note (l).—The express confinement and limitation of an estate by the words of its creation, so that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail:\* as when land is granted to a man *so long as* he is parson of Dale, or *while* he continues unmarried, or *until* out of the rents and profits he shall have made 500*l.* and the like. In such case, the estate determines as soon as the contingency happens, (when he ceases to be parson, marries a wife, or has received the 500*l.*) and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy. 2 *Bl. Com.* 155. For the distinction between a limitation and a condition, see *Shep. Touch.* (by Preston,) 117. 4 *Kent's Com.* 126, 127. 1 *Hilliard's Real Prop.* 370.

**LIMITED ADMINISTRATION.** An administration of a temporary character, granted for a particular period, or for a special or particular purpose. *Holthouse.*

**LIMITED DIVORCE.** A divorce for a limited time; a separation from bed and board. 2 *N. Y. Rev. St.* [146,] 80.

**LIMITED PARTNERSHIP.** A partnership consisting of one or more general partners, jointly and severally responsible as ordinary partners, and by whom the business is conducted, and one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund

so contributed. 3 *Kent's Com.* 34. 1 *N. Y. Rev. St.* [764,] 753.

**LINARIUM.** L. Lat. [from *linum*, flax.] In old records. A place where flax is sown; a flax-plat. *Pat.* 22 *Hen. IV.* par. 1, m. 33. *Blount.*

**LINEA.** Lat. In civil and old English law. A line; a series of persons descending from a common stock; (*series personarum à communi stipite descendendum.*) *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 153. It was *ascendens* as well as *descendens.* *Hale's Anal.* sect. xviii. *Fleta*, lib. 6, c. 1, § 11.

**LINEA OBLIQUA.** Lat. In the civil law. The oblique line. More commonly termed *linea transversalis*, (q. v.)

**LINEA RECTA.** Lat. In the civil and old English law. The right line; the direct line. *Bract.* fol. 67. *Fleta*, lib. 6, c. 1, § 11. A line of persons in which the one is descended mediately or immediately from the other. 1 *Mackeld. Civ. Law*, 138, 139, § 139. A line which includes progenitors and their offspring, (*quæ genitores et genitos complectitur.*) *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 153. *Recta*, in this application, has also the sense of upright or perpendicular, the right line being represented in diagrams by a vertical line crossed by others. See *Linea.*

*Linea recta semper præfertur transversali.* The right line is always preferred to the collateral. *Co. Litt.* 10.

**LINEA TRANSVERSALIS.** Lat. In the civil and old English law. The transverse or cross line; a line *crossing* the right or perpendicular line; a line proceeding or drawn from the right line, *on the side of it*, (*à latere*), either at right angles or obliquely; the oblique or collateral line. *Bract.* fol. 67, 68. *Fleta*, lib. 6, c. 1, § 11.

**LINEAL.** In a direct line from an ancestor. *Webster.*

**LINEAL CONSANGUINITY.** That kind of consanguinity which subsists between persons, of whom one is descended in a *direct line* from the other; as between a particular person and his father, grandfather, great-grandfather, and so upward, in the direct ascending line; or between the same person and his son, grandson, great-grandson, and so downwards in the direct descending line. 2 *Bl. Com.* 203.

**LINEAL DESCENT.** The descent of one person from another; as a son from a

father, in the right or direct line. See *Lineal consanguinity*.

The descent of an estate, or the right to it, in the right line of persons, that is, from grandfather to father, from father to son, from son to grandson, &c.\* 2 *Archb. N. Prius*, 351.

**LINEAL WARRANTY.** A warranty of land made by a person from, or through whom the title to the land warranted was derived, or might by possibility have been derived by the heir.\* 2 *Bl. Com.* 301. 4 *Kent's Com.* 469. 2 *Hilliard's Real Prop.* 360. A warranty made by a person in the line of the title.\* See *Collateral warranty*.

**LINES AND CORNERS.** In surveying and conveyancing. Boundary lines and their terminating points, where an angle is formed by the next boundary line. 4 *Bibb's R.* 133. 3 *Littell's R.* 101, 152.

**LINGUA.** Lat. A tongue; speech. Applied, in old English law, to the verdict of a jury. *Ponit se super linguas vestras de hoc de bono et malo*; of this he puts himself upon your tongues, for good and for evil. *Bract.* fol. 143 b.

**LINUM.** Lat. In civil and old English law. Flax. *Dig.* 32. 70. 10, 11. *Reg. Orig.* 99. Translated in Fitzherbert, *limc.* *F. N. B.* 90 K, 91.

**LIQUERE.** Lat. In the civil law. To be clear, evident, or satisfactory. When a *judez* was in doubt how to decide a case, he represented to the prætor under oath, *Sibi non liquere*, (that it was not clear to him,) and was thereupon discharged. *Calv. Lex. A. Gellius, Noct. Att.* xiv. 2.

**LIQUET.** Lat. [from *liquere*, q. v.] It is clear or apparent; it appears. *Satis liquet*; it sufficiently appears. 1 *Str.* 412.

**LIQUIDATE.** To clear away; to lessen; to pay. "To *liquidate* a balance means to *pay* it." Story, J. 8 *Wheaton's R.* 338, 362.

**LIQUIDATED DAMAGES.** A fixed sum of money expressly and specifically agreed upon between the parties to a contract, to be paid in the event of the non-performance of the contract by either. It is generally distinguished from a penalty, but is sometimes treated as a penalty, even when the expression *liquidated damages* is used. See 4 *Burr.* 2225. *Sidgwick on Damages*, 417, (3d ed.) ch. 16.

**LIQUIDO.** Lat. Clearly; evidently; manifestly. *Calv. Lex.* *Liquido jurare*;

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to swear from a full knowledge of the subject; to swear without hesitation, or in clear and absolute terms.\* *Id.*

**LIRE.** L. Fr. To read; to be read. *A lire quatre fois par an. Artic. sup. Chart.*

**LIRRA.** L. Fr. It shall be lawful. *Lirroit*; it should be lawful. *Kelham. L. Fr. Dict.*

**LIS.** Lat. A controversy or dispute. See *Lis mota*.

A suit at law; an action; a controversy carried on in form of law.\* In the civil law, this was a more general term than *actio*. *Litis nomen omnem actionem significat*; the term *lis* signifies every kind of action. *Dig.* 50. 16. 36. *Co. Litt.* 292.

**LIS MOTA.** Lat. A dispute arisen; a controversy originated. A term frequently used in the discussion of evidence in matters of pedigree, and repeatedly held by the courts to import not an *actual suit commenced*, but a *dispute* or controversy originating *prior* to the commencement of judicial proceedings. Wood, B. 4 *Campb.* 406. Lawrence, J. *Id.* 409. Mansfield, C. J. *Id.* 417. Bayley, J. 4 *M. & S.* 497. *Hubback's Evid. of Succession*, 664, 665. 1 *Greenl. on Evid.* § 131. See 1 *Peters' R.* 328, 337; Trimble, J.

*Lis mota* carries with it the further idea of a controversy upon the same particular subject in issue. 1 *Greenl. Ev.* § 132.

**LIS PENDENS.** L. Lat. In the civil law. A suit pending. A suit was not said to be pending before that stage of it called *litis contestatio*, (q. v.) 1 *Mackeld. Civ. Law*, 205, § 203. *Calv. Lex.*

In modern law. A pending suit; the actual pendency of a suit, or other judicial proceeding. 2 *Kent's Com.* 122.

In equity. A pending suit. A notice of *lis pendens* is one of the proceedings in a foreclosure suit. 2 *Barbour's Chan. Pr.* 178, 601. A subpoena served and a bill filed is a *lis pendens* against all persons. *Cross on Lien*, 140. Where a man is to be affected by a pending suit, there ought to be a close and continued prosecution of it. 1 *Vern.* 286. In order to constitute a *litis pendentia*, there must be a continuance of *litis contestatio*, and something must be done to keep it alive and in activity. 1 *Russ. & Myln.* 617.

**LIST.** In practice. A calendar of causes for argument or trial.

**LIST.** L. Fr. It may be; it is lawful.

*Britt. c. 70. Come bien luy list; as was lawful for him to do. Yearb. M. 8 Edw. III. 2.*

**LITE PENDENTE.** Lat. Pending the suit. *Fleta*, lib. 2, c. 54, § 23.

**LITEM SUAM FACERE.** Lat. In the Roman law. To make a suit his own. Where a *judex*, from partiality or enmity, evidently favored either of the parties, he was said *litem suam facere*. *Adam's Rom. Ant.* 269. *Calv. Lex.* He was in such case considered as guilty of a *quasi* malfeasance, (*quasi ex maleficio obligatus*), and was liable to a penalty, though he might have acted merely through imprudence. *Inst.* 4, 5, pr.

**LITERA.** Lat. In old English law. A letter. *Litera acquietantiæ*; a letter of acquittance. *Reg. Orig.* 150. *Litera cambii*; a letter of exchange. *Id.* 194. See *Literæ*.

The letter, as distinguished from the meaning of a writing. *Fleta*, lib. 2, c. 56, § 20. See *Qui hæret in litera*, &c.

Litter for horses. *Fleta*, lib. 2, c. 20.

**LITERA PISANA.** Lat. The Pisan letter. A term applied to the old character in which the copy of the Pandects formerly kept at Pisa, in Italy, was written. *Spelman*.

**LITERATURA.** Lat. [from *litera*, a letter.] In old English law. Education; learning; knowledge of letters. *Ad literaturam ponere*; to put to learning; to put to school. *Paroch. Ant.* 401. *Cowell. Minus sufficiens* in literatura; deficient in learning. The form of a bishop's return, where he refuses a clerk as being unfit to discharge the pastoral office for want of learning. 1 *Bl. Com.* 389, 390.

**LITERÆ.** Lat. Letters. A term applied, in old English law, to various instruments in writing, public and private. See *infra*.

**LITERÆ DIMISSORIÆ.** L. Lat. Dismissory or dismissory letters. See *Dismissoriæ literæ*.

**LITERÆ MORTUÆ.** Lat. Dead letters; fulfilling words of a statute. Lord Bacon observes that, "there are, in every statute, certain words which are as veins, where the life and blood of the statute cometh, and where all doubts do arise, and the rest are *literæ mortuæ*, fulfilling words." *Bac. Read. Uses, Works*, iv. 189.

**LITERÆ (or LITTERÆ) PATENTES.** L. Lat. In old English law. Letters patent; literally, open letters, (Fr. *lettres*

*ouvertes*.) *In cujus rei testimonium* has *litteras nostras fieri fecimus* patentes; In witness whereof, we have caused these our letters to be made patent. *Reg. Orig.* 4 b. *Bract.* fol. 72 b. *Litteræ patentes regis non erunt vacuæ*; the king's letters patent shall not be void. 1 *Bulstr.* 6.

**LITERÆ PROCURATORIÆ.** L. Lat. In old English law. Letters procuratory; letters of procuration; letters of attorney. *Bract.* fol. 40, 43. The written authority given to an attorney in fact, or procurator; still sometimes called a *letter of attorney*, and anciently termed in English a *writ*. *Bract.* fol. 40.

**LITERÆ RECOGNITIONIS.** L. Lat. In maritime law. A bill of lading. *Jacobson's Sea Laws*, 172.

**LITERÆ SIGILLATÆ.** L. Lat. In old English law. Sealed letters. The return of a sheriff was so called. *Fleta*, lib. 2, c. 64, § 19.

**LITIGANT.** [Lat. *litigans*, from *litigare*, q. v.] A person engaged in a law-suit; a party to a suit.

**LITIGARE.** Lat. To litigate; to carry on a suit, (*litem agere*), either as plaintiff or defendant; to claim or dispute by action; to test or try the validity of a claim by action.

**LITIGATE.** [from Lat. *litigare*, q. v.] To dispute or contend in form of law; to carry on a suit.

**LITIGIOUS.** In English ecclesiastical law. The subject of contending claims.\* If two presentations be offered to the bishop upon the same avoidance, the church is said to become *litigious*. 3 *Bl. Com.* 246.

**LITIGIOUS RIGHT.** In the civil law. A right which cannot be exercised without undergoing a law-suit. *Civ. Code of Louis.* Art. 3522, num. 22. *Pothier, Contr. of Sale*, num. 584.

**LITIGIUM.** Lat. [from *litigare*.] In the civil and old English law. Litigation; the contest between the parties to a suit; a suit or controversy. *Litigio pendente.* *Dig.* 4. 8. 49, pr. Bracton uses the word to denote that part of an action which commenced with the appearance of the defendant, and terminated with the judgment of the court. *Ad primam diem litigii.* *Bract.* fol. 444. *Tempore litigii, in ipso judicio, et ante judicium redditum, pendente litigio.* *Id.* fol. 436 b. It is used in the Books of Feuds. *Lib.* 2, tit. 15.

**LITIS CONTESTATIO.** In the civil

and canon law. Contestation of suit; the process of contesting a suit by the opposing statements of the respective parties; the process of coming to an issue; the attainment of an issue; the issue itself. See *Contestatio litis*.

In the practice of the ecclesiastical courts, —the general answer made by the defendant, in which he denies the matter charged against him in the libel. *Hallifax, Anal. b. 3, c. 11, num. 9.* 2 *Browne's Civ. & Adm. Law*, 358, and note.

**LITIS DOMINIUM.** Lat. In the civil law. Ownership, control or direction of a suit. A fiction of law by which the employment of an attorney or proctor, (*procurator*.) in a suit was authorized or justified, he being supposed to become, by the appointment of his principal, (*dominus*) or client, the *dominus litis*. *Heinecc. Elem. Jur. Civ. lib. 4, tit. 10, §§ 1246, 1247.*

**LITTORAL.** [from Lat. *littus* or *litus*, the shore.] Belonging to the shore; on the sea-shore. A littoral proprietor is a proprietor of land on the shore of the sea. 17 *Howard's R.* 426.

**LITTUS.** Lat. See *Litus*.

**LITTUS MARIS.** Lat. In old English law. The sea-shore. "It is certain that that which the sea overflows, either at high spring tides or at extraordinary tides, comes not, as to this purpose, under the denomination of *littus maris*, and consequently the king's title is not of that large extent, but only to land that is usually overflowed at ordinary tides. That, therefore, I call the *shore* that is between the common high-water and low-water mark, and no more." *Hale de Jur. Mar.* pars 1, c. 4.

**LITURA.** Lat. [from *linere*, to daub.] In the civil law. An obliteration or blot in a will or other instrument. *Dig.* 28. 4. 1. 1.

**LITUS, Littus.** Lat. In the civil law. A shore or coast; the sea-shore. *Litus est quousque maximus fluctus à mari pervenit*; the shore is as far as the largest wave from the sea reaches. *Dig.* 50. 16. 96. This definition of the Digests is said to have been first established by Cicero, in a case where he acted as an arbiter. *Id. ibid.* But see *Cic. Topic. vii.* quoted in *Callis on Sewers*, 66, note. It is somewhat varied in the Institutes, thus: *Est litus maris quatenus hibernus fluctus maximus excurrit*; that is the sea-shore as far as the largest winter-wave extends, or runs up. *Inst.* 2.

1. 3. See *Dig.* 50. 16. 112. *Ang. on Tide-Waters*, 67, ch. 3. See *Littus maris, Shore*.

**LITUS, Liddus, Lito.** L. Lat. In old European law. A kind of servant; one who surrendered himself into another's power, (*servus dedititius*.) *Spelman*.

**LIVERER.** L. Fr. To deliver. *Kelham. Livre*; delivered. *Britt.* c. 48. *Liveres. Id.* c. 2. *Livromus*; we delivered. *Yearb. H. 12 Hen. VI.* 7.

**LIVERISON.** L. Fr. Delivery. *Britt.* c. 45.

**LIVERY.** [L. Lat. *deliberatio*; Lat. *traditio*.] In English law. Delivery. See *Livery of seisin*.

A writ which lay for an heir to obtain possession of lands. *Cowell*.

The privilege of a particular company. "Livery and clothing" of a company. *Say.* 274. See 12 *East*, 22. See *Commonalty*.

**LIVERY OF SEISIN.** [L. Fr. *liverie de seisin, bail de seisin*; L. Lat. *deliberatio seysinæ*.] Delivery of seisin; delivery of corporeal possession of lands or tenements conveyed to another; a material ceremony in the old conveyance by feoffment, without which the feoffee had but a mere estate at will. 2 *Bl. Com.* 311. Livery in deed, or actual livery, was performed by the feoffor, or his attorney, entering on the land, with the charter of feoffment, and after declaring the contents of the feoffment in the presence of witnesses, delivering to the feoffee a clod or turf, or a twig or bough there growing, (or, if it were a house, delivering the ring or latch of the door,) in the name of seisin of all the lands contained in the deed. 2 *Bl. Com.* 315. 4 *Kent's Com.* 480. *Litt. sect.* 59, 60. *Co. Litt.* 48.

Livery of seisin is constantly termed by Britton *bail* of seisin, (*bail de seisine*.) *Britt.* c. 40. See *Bail*. In American law, it is almost unknown. 2 *Hilliard's Real Prop.* 293, 295.

**LIVORARE.** L. Lat. In old European law. To beat; to bruise by beating. *Marculf.* lib. 1, form. 29.

**LOAN, (or LOAN FOR USE.)** [Sax. *hlæn*; Lat. *commodatum*.] A bailment of goods to be used by the bailee temporarily, or for a certain time, without reward. *Story on Bailm.* § 6. See *Commodatum*.

**LOBIUM.** L. Lat. In old records. A parlor, or withdrawing room. *Spelman*.

**LOCAL.** [L. Lat. *localis*, from *locus*,

place.] Relating to place; expressive of place; belonging or confined to a particular place. Distinguished from *general*, *personal* and *transitory*.

**LOCAL ACTION.** In practice. An action which must be brought in a particular *place* or county.\* An action founded on such a cause as necessarily refers to some particular locality. 3 *Steph. Com.* 463. Of this nature are all actions for the recovery of land, and actions for injuries to real property. An action is *local*, if all the principal facts on which it is founded be local. *Steph. Pl.* 289.

**LOCAL ALLEGIANCE.** A temporary kind of allegiance, depending on place.\* That kind of allegiance which in England is due from an alien or stranger born, for so long time as he continues within the king's dominion and protection. 1 *Bl. Com.* 370. So, in the United States, during the residence of aliens amongst us, they owe a local allegiance, and are equally bound with natives to obey all general laws for the maintenance of peace and the preservation of order, and which do not relate specially to our own citizens. 2 *Kent's Com.* 63, 64.

"LOCAL STATUTES regard such things as are really upon the spot in England, as the Statute of Frauds, which respects lands situate in this kingdom." Lord Mansfield, C. J. 1 *W. Bl.* 246.

**LOCAL VENUE.** In pleading. A venue which must be laid in a particular county. When the action could have arisen only in a particular county, it is local, and the venue must be laid in that county. 1 *Tidd's Pr.* 427. See *Local action*, *Venue*.

**LOCARE.** Lat. In the civil and old English law. To let for hire, as a house, land or other thing; to deliver or bail a thing for a certain reward or compensation. *Dig.* 19. 2. 3, 4, *et seq.* *Bract.* fol. 62. *Fleta*, lib. 2, c. 59, § 1.

**LOCARIUM.** L. Lat. In old European law. The price of letting; money paid for the hire of a thing; rent. *Spelman*.

**LOCATE.** [from Lat. *locus*, place.] In American law. To place; to fix, ascertain or designate the place (*locus*) of a thing; to describe the place or situation of a certain piece or tract of land. See *Location*.

To mark out the boundaries, or identify the place or site of a piece of land, according to a description before given. "If a

patent calls for a boundary, the plaintiff may *locate* the land according to the boundaries." 1 *Harr. & McH.* 359, *arg.*

To place one's self upon land; to settle on it, or take actual possession.

**LOCATIO.** Lat. [from *locare*, to let.] In the civil law. A letting for hire; a bailment or delivery of a thing for a certain compensation. *Inst.* 3. 25. *Dig.* 19. 2. 2. 1. Translated in Scotch law, *location*. 1 *Stair's Inst.* b. 1, tit. 15, sect. 1, 5, 6. *Story on Bailm.* §§ 8, 368. Sometimes called *locatum*, (q. v.)

**LOCATIO-CONDUCTIO.** Lat. In the civil law. A compound word used to denote the contract of bailment for hire, expressing the action of *both* parties, viz. a letting by the one, and a hiring by the other. 2 *Kent's Com.* 586, note. *Story on Bailm.* § 368.

In the Roman civil law, and in Bracton and Fleta, this phrase is composed of distinct words, *locatio et conductio*. *Inst.* 3. 25. *Dig.* 19. 2. 1. *Bract.* fol. 62. *Fleta*, lib. 2, c. 59, § 1.

**LOCATIO CUSTODIÆ.** Lat. A letting to keep; a bailment or deposit of goods for hire. *Story on Bailm.* § 442.

**LOCATIO OPERIS FACIENDI.** Lat. A letting out of work to be done; a bailment of a thing for the purpose of having some work and labor or care and pains bestowed on it for a pecuniary recompense. 2 *Kent's Com.* 586, 588. *Story on Bailm.* §§ 370, 421, 422.

**LOCATIO OPERIS MERCIUM VE-HENDARUM.** Lat. A letting of work to be done in the carrying of goods; a contract of bailment by which goods are delivered to a person to carry for hire. 2 *Kent's Com.* 597. *Story on Bailm.* §§ 370, 457.

**LOCATIO REI.** Lat. A letting of a thing to hire. 2 *Kent's Com.* 586. The bailment or letting of a thing to be used by the bailee for a compensation to be paid by him. *Story on Bailm.* § 370.

**LOCATION.** [from *locate*, q. v.] In American land law. The designation of the boundaries of a particular piece of land, either upon record, or on the land itself. 1 *Bibb's R.* 84.

The finding and marking out the bounds of a particular tract of land, upon the land itself, in conformity to a certain description contained in an entry, grant, map, &c.; such description consisting in what are termed *locative calls*, (q. v.)

**LOCATIVE CALLS.** In American land law. Calls for the purpose of location; calls which designate the particular boundaries of lands, as distinguished from general description.\* See *Call*. Those calls in entries of lands, the object of which is to ascertain and identify the land for the purpose of *location*. References in entries and grants of land to certain particular physical objects (as trees, streams, &c.) which exactly describe the land to be located.\* Marshall, C. J. 2 *Wheaton's R.* 206, 211. Marshall, C. J. 10 *Wheaton's R.* 454, 463. See 7 *Peters' R.* 171. 18 *Wendell's R.* 157.

**LOCATOR.** Lat. [from *locare*, to let; Fr. *locateur*, *loueur*, *bailleur*.] In the civil law. A letter; one who lets; the correlative of *conductor*, (a hirer.) *Inst.* 3. 25, pr. *Dig.* 19. 2. 9, pr. *Cod.* 4. 65. 13, 15. He, who being the owner of a thing, lets it out to another for hire or compensation. *Story on Bailm.* § 369. Used in Scotch law. 1 *Stair's Inst.* b. 1, tit. 15, §§ 1, 5, 6.

**LOCATOR.** In American land law. One who locates land, or intends or is entitled to locate. 1 *Bibb's R.* 81. 1 *Littell's R.* 187. See *Location*.

**LOCMAN.** Fr. In French marine law. A pilot. *Ord. Mar.* liv. 4, tit. 3, art. 1.

**LOCUM TENENS.** L. Lat. [L. Fr. *lieu tenant*.] In old English law. A lieutenant, deputy or representative. *Reg. Orig.* 17. *Fleta*, lib. 2, c. 64, § 2. Literally, a place holder; one who holds the place of another.\* *Locum tenens decani et vices ejus gerens*; holding the place of the dean, and performing his duties. *Yearb.* M. 9 Edw. III. 33. *Locum tenens regni*; lieutenant of the realm. 8 Co. 21 b, *The Prince's case*. 1 *P. Wms.* 712.

**LOCUM TENERE.** Lat. In old statutes. To hold place; to be applicable. *Et sciendum est quod istud statutum tenet locum de terris venditis*, &c. and it is to be known that this statute has application to lands sold, &c. *Stat. Quia Emptores*, c. 3. *Locum habere*, (to have place,) had the same meaning. *Fleta*, lib. 4, c. 1, § 16.

To have place; to take effect, as to time. *Et incipiet locum tenere ad festum Sancti Andreæ apostoli*; and it shall begin to take effect at the feast of St. Andrew the apostle. *Stat. Quia Emptores*, c. 3.

**LOCUPLES.** Lat. In the civil law. Able to respond in an action; good for

the amount which the plaintiff might recover. *Dig.* 50. 16. 234. 1.

**LOCUS.** Lat. [Fr. *lieu*.] A place; the place. See *infra*.

**LOCUS.** Lat. In the civil law. A place; a piece or portion of land, or of an estate, (*fundus*.) *Dig.* 50. 16. 60.

**LOCUS CONTRACTUS.** Lat. The place of a contract; the place where a contract is made. *Locus contractus regit actum*. The place of the contract governs the act; the law of the place where it is made governs it as to construction, wherever it is attempted to be carried into effect. Personal contracts are to have the same validity, interpretation and obligatory force in every other country, which they have in the country where they are made. 2 *Kent's Com.* 458.

**LOCUS DELICTI.** Lat. The place of the offence; the place where an offence was committed. 2 *Kent's Com.* 109.

**LOCUS IN QUO.** Lat. [Fr. *la lieu ou*.] In pleading. The place in which; the place where. 6 *Mod.* 158, 198. 1 *Leon.* 60. A term used in actions of trespass to denote *the place in which* the trespass was committed. 1 *Archb. N. Prius*, 314. See 1 *Salk.* 94.

**LOCUS PARTITUS.** Lat. In old English law. A place divided. A division made between two towns or counties, to make out in which the land or place in question lies. *Fleta*, lib. 4, c. 15, num. 1. *Cowell*. See *Jocus partitus*.

**LOCUS PŒNITENTIÆ.** Lat. In the civil law. Place or room for repentance; room to retract; opportunity allowed a party to withdraw from a contract, before it is completed. *Inst.* 3. 24, pr. A phrase adopted by Bracton, and extensively used in modern law. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 3.

**LOCUS PUBLICUS.** Lat. In the civil law. A public place. *Dig.* 43. 8. 1. *Id.* 43. 8. 2. 3.

**LOCUS REI SITÆ.** L. Lat. The place where a thing is situated. In proceedings *in rem*, or the real actions of the civil law, the proper forum is the *locus rei sitæ*. *Story*, J. 2 *Gallison's R.* 191, 197.

**LOCUS SIGILLI.** Lat. The place of the seal; the place occupied by the seal of written instruments. Usually abbreviated to L. S.

**LODEMANAGE.** In old English law. The hire of a pilot for conducting a ship

from one place to another. *Cowell. Blount* calls it *lodemerege*.

**LODGER.** One who occupies hired apartments in another's house; a tenant of part of another's house. See *Lodgings*.

**LODGINGS.** Habitation in another's house. *Wharton's Lex.* Apartments in another's house, furnished or unfurnished, occupied for habitation; the occupier being termed a *lodger*.

**LODS ET VENTES.** Fr. In old French and Canadian law. A fine payable by a *roturier*, on every change of ownership of his land; a mutation or alienation fine. *Steph. Lect.* 351. *Dunkin's Address*, 54, 60.

**LOGOGRAPHIUS.** Græco-Lat. In the Roman law. A public clerk, register or book-keeper; one who wrote or kept books of accounts. *Dig.* 50. 4. 18. 10. *Cod.* 10. 69.

**LOI, Loy.** L. Fr. Law. *Conf. Cart.* 25 Edw. I.

**LOIAL.** L. Fr. Lawful. *Kelham. Loialx gens de la visne ou tiel fait si fist*; lawful people of the neighborhood where the fact was done. *Rot. Parl.* 4 Hen. IV. cited 1 *Rep. in Ch.* appx. *Loialment*; lawfully. *Britt.* c. 54.

**LOIER, Loyer.** L. Fr. Fee; reward. *Kelham.*

**LOKE.** O. Eng. Lock; a lock. *Ofre treste lokes maketh trene hyman.* Safe locks often make trusty servants. An old English proverb. *Fleta*, lib. 2, c. 72, § 3.

**LOMBARDS.** A name given to the merchants of Italy, numbers of whom, during the twelfth and thirteenth centuries, were established as merchants and bankers in the principal cities of Europe. 1 *Robertson's Charles V.* Appendix, note xxx. 1 *Duer on Ins.* 33. *Introd. Disc. Lect.* ii. In a case in the Year Books, a writ was brought *vers les Lombards de Londres*, (against the Lombards of London.) *Præcipe societati Lombardorum Lond' mercatorum de Florence*; (command the company of Lombards of London, merchants of Florence.) The defendants were called by the crier, "*Le felowship de Lombards*." Two Lombards of London appeared. This was objected to as no appearance. *Yearb.* T. 19 Hen. VI. 11.

**LONDRES, Londre.** L. Fr. London. *Yearb.* P. 1 Edw. II. p. 4.

**Longa possessio est pacis jus.** Long possession is the law of peace. *Branch's Princ. Co. Litt.* 6.

**Longa possessio jus parit.** Long possession begets right. *Fleta*, lib. 3, c. 15, § 6.

**Longa possessio parit jus possidendi, et tollit actionem vero domino.** Long possession produces the right of possession, and takes away from the true owner his action. *Co. Litt.* 110 b.

**LONGTEYNE, Lointagnes.** L. Fr. Remote; distant. *Britt.* c. 44. *Kelham.*

**Longum tempus, et longus usus qui excedit memoria hominum, sufficit pro jure.** Long time and long use, exceeding the memory of men, suffices for right. *Branch's Princ. Co. Litt.* 115 a.

**LONGURE.** L. Fr. Length. *Britt.* c. 63.

**LOQUELA.** L. Lat. [from *loqui*, to speak.] In old English practice. A plaint, plea or suit. *Si loquela fuerit in curia baronis*; if the plaint were in a court baron. *Bract.* fol. 363 b. *Reg. Orig.* 18 b.

A plaint or declaration; the first pleading of a plaintiff. 1 *Reeves' Hist.* 248.

A statement; saying or affirmation. *Magna Charta*, c. 28. *Fleta*, lib. 2, c. 63, § 10.

An imparlance. *Cowell. Blount.*

**Loquendum ut vulgus, sentiendum ut docti.** We must speak as the common people, we must think as the learned. 7 *Co.* 11 b, *Calvin's case.* In construction of law, words may be taken in their ordinary sense; but when technically used, as in pleading, they are to be taken technically.\* See 4 *Co.* 46 b. 3 *Kebl.* 20. *Het.* 101.

**LORD.** [Sax. *hlaford*; Lat. *dominus*; Fr. *seignieur*; Gr. *κυριος*.] In English law. A title of honor or nobility belonging properly to the degree of baron, but applied also to the whole peerage, as in the expression, "the House of Lords." 1 *Bl. Com.* 396—400.

A title of office, as Lord Mayor, Lord Commissioner, &c.

In feudal law. A feudal superior or proprietor; one of whom a fee or estate is held. See *Fee, Tenure*.

**LORD ADVOCATE.** The chief public prosecutor of Scotland. 2 *Alison's Crim. Pr.* 84.

**LORDSHIP.** [Lat. *dominium*.] In old English law. A seignior; the domain or estate of a lord.

A title of honor applied to a nobleman, not a duke; to judges, and some other persons in authority and office. *Wharton's Lex.*

**LOST OR NOT LOST.** In commercial law. A clause introduced into marine

policies of insurance, (and said to be peculiar to the English policies,) to show that the contract is intended to embrace losses which may have happened before the policy is subscribed. 1 *Phillips on Ins.* 438. 3 *Kent's Com.* 258, 259.

LOT. [Sax. *hlot*.] In old English law. A contribution; a portion or share of a tribute, or any payment which one is bound to make with others, (*pars tributi sive solutionis alicujus, quam inter alios quis tenetur præstare*.) *Spelman*. Frequently used with the word *scot*. "*Ane hlot and an scote*." *Id.* Hence *Scot* and *lot*, (q. v.)

LOU. L. Fr. Where. *L. Fr. Dict.*

LOUR, *Lcour, Ler, Lirr, Loar, Lor, Lur, Lure, Lurr*. L. Fr. Their. *Kelham*.

LOW JUSTICE. In old European law. Jurisdiction of petty offences, as distinguished from *high justice*, (q. v.)

LOW WATER. The furthest receding point of ebb-tide. *Wayne, J.* 13 *Howard's R.* 417. See *Id.* 425, *Nelson, J.*

LOW-WATER MARK. That part or line of the sea-shore to which the waters recede, at ordinary low-tide. *Angell on Tide-Waters*, 68—73, ch. 3.

LOWER. L. Fr. A fee or reward; a bribe. *Britt.* fol. 3 b. *Id.* c. 21, 24.

LOWERS. Fr. In French maritime law. Wages. *Ord. Mar.* liv. 1, tit. 14, art. 16.

LOY. L. Fr. In old English law. Law. *La ley de la terre. Conf. Cartar.* 25 *Edw. I.*

LOYAL. L. Fr. In old English law. Lawful. *N'est loyal pur luy*; it is not lawful for him. *Dyer*, 36 b, (Fr. ed.) *T. Jon.* 24. "Nearest and most loyal friends of the intestate." *Stat.* 31 *Edw. III.* c. 11, cited 1 *P. Wms.* 42, 45, arg.

LOYALMENT. L. Fr. Lawfully. *Dyer*, 102, (Fr. ed.)

LUCID INTERVAL. An interval of reason enjoyed by an insane person, or lunatic. The expression is a very literal translation of the *lucidum intervallum* of Bracton and the Register. *Bract.* fol. 12, 43. *Req. Orig.* 267 a.

LUCRATIVE SUCCESSION. In Scotch law. A kind of passive title by which a person accepting from another, without any onerous cause, [or without paying value,] a disposition of any part of his heritage, to which the receiver would have succeeded as heir, is liable to all the grantor's debts contracted before the said disposition. 1 *Forbes' Inst.* part 3, p. 102. *Bell's Dict.*

LUCRATUS. Lat. [from *lucrum*, gain.] In Scotch law. A gainer. *Kames' Equity*, b. 1, part 1, sec. 2, art. 1.

LUCRI CAUSA. Lat. For the sake of gain. An expression quoted by Blackstone, as used in the civil law definition of theft, to express the motive of the act. 4 *Bl. Com.* 232. The words of the Institutes, in the passage referred to, are *lucri faciendi gratiâ*, (for the sake of making gain.) *Inst.* 4. 1. 1. The expression itself has since been held inapplicable in the common law. *Russ. & R. C. C.* 292. See 2 *Russell on Crimes*, 3. *Lewis' U. S. Crim. Law*, 450.

LUCRUM CESSANS. Lat. In Scotch law. A ceasing gain, as distinguished from *damnum datum*, an actual loss. *Kames' Equity*, b. 1, part 1, ch. 1, sect. 2.

LUCTA. Lat. In old English law. A wrestling-match. *Fleta*, lib. 2, c. 72, § 9.

LUM. L. Fr. A man. *LL. Gul. Cong.* l. 41.

LUCTUOSA HÆREDITAS. Lat. A sad inheritance. See *Hæreditas luctuosa*.

LUCTUS. Lat. In the Roman law Mourning. See *Annus luctûs*.

LUMEN. Lat. In the civil law. Light; the light of the sun or sky; the privilege of receiving light into a house. *Dig.* 8. 2. 10, 15—17. Distinguished from *prospectus*, (prospect.) *Id.* 8. 2. 16.

A light or window. See *Lumina*.

LUMINA. Lat. [plur. of *lumen*, q. v.] In the civil law. Lights; windows; openings to obtain lights for one's building. *Dig.* 8. 2. 10, 15, 17, 23. 1 *Mackeld. Civ. Law*, 340, § 311.

LUNACY. [L. Lat. *morbus lunaticus*. See *Lunatic*.] Insanity or madness. Properly, that kind of insanity which is broken by intervals of reason. See *Lunatic*.

Mr. Stock, in his Treatise on the Law of *Non Compotes Mentis*, adopts lunacy as the general term to denote all the varieties of mental disorder, not fatuous. *Intro.* p. 8.

LUNATIC. [L. Lat. *lunaticus*, from *luna*, the moon.] An insane person; one who has lost the use of his reason. Properly, one who has lucid intervals, (*qui gaudet lucidis intervallis*;) sometimes enjoying his senses and sometimes not, and that frequently depending, as some have imagined, upon the change of the moon.\* 4 *Co.* 124 b, *Beverley's case*. 1 *Bl. Com.* 304. 3 *Steph. Com.* 530. In New-York, this term is declared by statute to extend

to every person of unsound mind, other than idiots. 2 *Rev. Stat.* [143, § 29,] 77, § 28. This accords with the arrangement of Mr. Stock. See *Lunacy*.

The influence of the moon in bringing on the paroxysms of lunacy is now generally exploded in science; and yet it is singular that, in most languages, the word corresponding with *lunatic* is similarly derived; as Gr. *σεληνιακός*, from *σελήνη*; Lat. *lunaticus*, from *luna*; Germ. *mondsüchtig*; Eng. moon-sick. *Stock on Non Comp. Ment.* Introd. 8, 9, note.

**LUNDRESS.** In old English law. A silver penny, so called because it was to be coined only at London, (*à Londres*), and not at the country mints. *Lowndes' Essay on Coins*, 17. *Cowell*.

**LUPULICETUM.** L. Lat. In old English law. A hop ground, or place where hops grow. *Co. Litt.* 4 b.

**LUS, Luz.** L. Fr. Places. *Kelham*.

**LUSHBOROW, Lushburgh.** In old English law. A base sort of money, coined beyond sea in the likeness of English coin, and introduced into England in the reign of Edward III. Prohibited by statute 25 Edw. III. st. 4. *Spelman. Cowell*.

**LUTOSA.** Lat. [from *lutum*, clay, mud.] In old pleading. Miry; muddy; impassable as a road. *Cro. Car.* 366.

**LUTUM.** Lat. Clay. *Dyer*, 90.

**LUY.** L. Fr. Him; her; it. *L. Fr. Dict.*

**LYEF-YELD.** Sax. In old records. Lief-silver or money; a small fine paid by the customary tenant to the lord, for leave to plow or sow, &c. *Somner's Gavelk.* 27.

**LYER, Lier.** L. Fr. To read. *L. Fr. Dict.*

To tie or bind. *Kelham*.

**LYTÆ.** Græco-Lat. [from Gr. *λύω*, to loose or solve.] In the old Roman law. A name given to students of the civil law in the fourth year of their course, from their being supposed capable of solving any difficulty in law. *Tayl. Civ. Law*, 39.

## M.

**M.** The letter with which persons convicted of manslaughter, and admitted to the benefit of clergy, were marked or branded on the brawn of the left thumb. *Stat. 4 Hen. VII. c. 13. Cowell.* See *Burning in the hand*.

**MACEGRIEFS, Macegrefts.** L. Fr.

[from *mace*, flesh, and *griffer*, to snatch.] In old English law. Those who willingly bought and sold stolen flesh, knowing it to be stolen. *Britt. c. 29, 30. Spelman. Blount*.

**MACER, (or MACE-BEARER.)** An officer attending on the Scotch courts. *Bell's Dict. 2 Swinton's R.* 363.

**MACHAMIMUM, Mechamium.** L. Lat. [from Fr. *mechaigne*.] In old Scotch law. Mailhem; Scotticè, *manzie*. *Reg. Maj.* lib. 4, c. 4. *Skene de Verb. Sign.*

**MACHECARIUS, Macarius.** L. Lat. In old English law. A fleshmonger; a butcher. *Spelman. Cowell.* Called in the Statutum Walliæ, *macerarius*. *Barriug. Obs. Stat.* 124.

"**MACHINE,**" in patent law, includes every mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result. But where the result or effect is produced by chemical action, by the operation or application of some element or power of nature, or of one substance to another, such modes, methods or operations are called *processes*. A new process is usually the result of discovery; a machine, of invention. *Grier, J. in Corning v. Burden*, 15 *Howard's R.* 252, 267. See *Invention*.

**MACHOLUM.** L. Lat. In old European law. A barn or granary open at the top, (*sine tecto*.) *Spelman*.

A rick or stack of corn, (grain.) *Id.*

**MACINARE.** L. Lat. In old European law. To grind. *Spelman*.

**MACULARE.** L. Lat. In old European law. To wound. *L. Alam. tit. 61, § 1. Spelman*.

**MADLE.** L. Fr. Male. *Britt. c. 119. Yearb. M. 9 Edw. III. 59.*

**MÆREMIUM, Meremium, Maremium, Maheremium.** L. Lat. [from L. Fr. *marisme*, timber.] In old English law. Timber; wood for the construction of houses or ships. *Blount. Bract. fol. 122. Fleta*, lib. 1, c. 20, § 114. See *Maheremium, Maremium*.

**MÆGBOTE.** Sax. [from *mæg*, a kinsman, and *bote*, a compensation.] In Saxon law. A recompense or satisfaction for the slaying or murder of a kinsman, (*compensatio pro cognato interfecto*.) *Spelman*.

**MAGIS.** Lat. More. **Magis dignum trahit ad se minus dignum.** The more worthy draws to itself the less worthy. *Yearb. T. 20 Hen. VI. 2, arg.*

**MAGISTER.** Lat. [from *magis*, more, denoting superiority.] A master; a ruler; a chief or superior. One who is elevated above others by office, position, or attainments.\* One whose authority and example we follow; one upon whom the chief care of any matter devolves. *Calv. Lex.*

**Magister rerum usus.** Use is the master of things. *Co. Litt.* 229 b. Usage is a principal guide in practice. *Wing. Mar.* 752, max. 203.

A title of office in the Roman empire. *Magister equitum*; master of the horse. *Co. l.* 29. 1. *Calv. Lex.* *Magister libellorum*; master of requests. *Id.* *Magister palatii*, or *officiorum*; master of the palace or of the offices. An officer resembling the modern Lord Chamberlain. *Tayl. Civ. Law*, 37.

**MAGISTER.** Lat. One who has attained a degree of eminence in any science, or in literature. *Spelman.* Hence the degree of *master*, (as master of arts,) which anciently was equivalent to *doctor*. *Id.*

**MAGISTER CANCELLARIÆ.** L. Lat. In old English law. Master of the chancery; master in chancery. These officers were said to be called *magistri*, because they were priests. Whitlock, *J. Latch*, 133.

**MAGISTER NAVIS.** Lat. In the civil law. The master of a ship or vessel. *Inst.* 4. 7. 2. He to whom the care of the whole vessel is committed, (*cui totius navis cura mandata est.*) *Dig.* 14. 1. 1. 1, 5. *Story on Agency*, § 36. *Loccen. de Jur. Mar.* lib. 2, c. 1, s. 9.

**MAGISTER SOCIETATIS.** Lat. In the civil law. Master of a partnership; manager, director or general agent of a partnership. A person specially appointed by the members of a partnership to administer its affairs. *Story on Partn.* § 95.

**MAGISTRALIA BREVIA.** L. Lat. In old English practice. Magisterial writs; writs adapted to special cases, and so called from being framed by the *masters* or principal clerks of the chancery. *Bract. fol.* 413 b. *Crabb's Hist.* 547, 548.

**MAGISTRATE.** [from Lat. *magistratus*, q. v.] A person clothed with power as a public civil officer. *Story J.* 2 *Sumner's R.* 401, 404.—A public civil officer, invested with the executive government or some branch of it. *Webster.* An alderman is, in the strictest sense, a magistrate. 2 *Sumner's R.* 401. An American consul at a foreign port is a magistrate. 13 *Pick. R.* 523.

**MAGISTRATUS.** Lat. [from *magister*, a master.] In the civil law. A magistrate, (Gr. ἀρχων.) *Calv. Lex.* A judicial officer who had the power of hearing and determining causes, but whose office properly was to inquire into matters of law, as distinguished from fact. *Hallifax, Anal.* b. 3, c. 8.

Magistracy; the office or place of a magistrate. *Id.*

**MAGNA ASSISA.** L. Lat. In old English law. The grand assise. *Glanv.* lib. 2, c. 11, 12. See *Grand assise*.

**MAGNA AVERIA.** L. Lat. In old pleading. Great beasts, as horses, oxen, &c. *Cro. Jac.* 580.

**MAGNA CHARTA, (or CARTA.)** L. Lat. [L. Fr. *la Grande Chartre*.] The Great Charter. The celebrated charter of English liberties, called by Spelman, *augustissimum Anglicarum libertatum diploma et sacra anchora*, granted by King John, June 15, 1215, at Runningmede or Runemede, and confirmed, with some alterations, by Henry III. in the 9th year of his reign. This charter of Henry III. is the Great Charter which is always referred to as the basis of the English constitution; the charter of John being only remembered as a monument of antiquity. 1 *Reeves' Hist. Eng. Law*, 209, 231. *Crabb's Hist.* 133. The charter of Henry is the oldest printed statute now extant in England. 1 *Bl. Com.* 85. The original charter of John is still preserved in the British Museum.

Spelman, who has given a sketch of its history in his Glossary, observes that it was called *Magna* (Great) from its superiority in size to the *Charta de Foresta*, which was granted about the same time. Other reasons for the name have, however, been given. *Cowell.* Lord Coke has written an elaborate commentary upon it in his Institutes. 2 *Inst.* According to the same author, it has been confirmed above thirty times. *Co. Litt.* 81. 5 *Co.* 64.

*Magna fuit Magne quondam reverentia Chartæ.* Great was the reverence formerly paid to the Great Charter. 2 *Inst.* proæm.

*Magna Charta* and the *Carta de Foresta* have been carefully edited by Sir William Blackstone, with an Introductory Discourse, in which he has traced the history of these charters from the original Articles or heads of Agreement at the Congress in Runningmede, upon which King John's charter was founded, to their final establish-

ment in the 29th year of King Edward the First.

The documents printed in this valuable edition are,

I. The original Articles of Magna Carta, (*Articuli Magne Carte Libertatum, sub sigillo Regis Johannis,*) consisting of forty-nine heads; printed from the original formerly in the possession of Bishop Burnet.

II. The Magna Carta of King John (framed from the foregoing articles) printed from one of the Cottonian originals in the British Museum, with various readings taken from the other Cottonian original, and the Red Book of the Exchequer at Westminster.

III. The Magna Carta granted in the first year of Henry III. printed from the original in the archives of the cathedral at Durham, with various readings from an entry in the Red Book of the Exchequer at Dublin.

IV. Another Magna Carta of Henry III. granted A.D. 1217; printed from the original in the Bodleian Library at Oxford, with various readings from a MS. chronicle of the city of London.

V. The Magna Carta of 9 Hen. III. printed from an original in the possession of John Talbot, Esq., with various readings from another original in the church at Durham, an entry in the Red Book of the Exchequer at Westminster, a charter of Inspeximus, 28 Edward I. in the archives of Oriel College in Oxford, and another in the archives of the collegiate church of Westminster, and two enrolments in the Tower of London.

VI. The Carta de Foresta, 9 Henry III. printed from an original in the archives of the cathedral at Durham, with various readings from two charters of Inspeximus, 28 Edward I., and two enrolments in the Tower of London.

VII. The Carta Confirmationis, 21 Henry III.

VIII. The Carta Confirmationis, 49 Henry III.

IX. The fifth chapter of the Statute of Marleberge, 52 Henry III.

X. The Confirmatio Cartarum, 25 Edward I.

XI. The first part of the Articuli super Cartas, 28 Edward I. with some other instruments illustrative of the subject. See *Blackstone's Law Tracts*.

MAGNA CULPA. Lat. In the civil

law. Great or gross fault. *Magna culpa dolus est*. Gross fault is fraud. *Dig.* 50. 16. 226. Otherwise termed *lata culpa*.

MAGNA NEGLIGENTIA. Lat. In the civil law. Great or gross negligence. *Magna negligentia culpa est, magna culpa dolus est*. Gross negligence is fault; gross fault is fraud. *Dig.* 50. 16. 226.

MAGNA PRECARIA. L. Lat. In old English law. A great or general reapp-day. *Cowell. Blount. See Precaria*.

MAGNA SERJANTIA. L. Lat. In old English law. Grand serjeanty. *Fleta*, lib. 2, c. 4, § 1.

MAGNUM CAPE. L. Lat. In old practice. Great or grand cape. *Fleta*, lib. 6, c. 14, § 2. 1 *Reeves' Hist.* 418. See *Grand cape*.

MAGNUM CENTUM. L. Lat. In old records. The great hundred; six-score, or one hundred and twenty. *Cart.* 20 *Hen.* III. m. 1. *Cowell*.

MAGNUM CONCILIUM. L. Lat. In old English law. The great council; the general council of the realm; afterwards called parliament. 1 *Bl. Com.* 148. 1 *Reeves' Hist.* 62. *Spelman*.

The king's great council of barons and prelates. *Spelman. Crabb's Hist.* 228.

MAGNUS ROTULUS STATUTORUM. L. Lat. The great Statute Roll. The first of the English statute rolls, beginning with Magna Charta, and ending with Edward III. *Hale's Hist. Com. Law*, 16, 17.

MAGRE, *Maugre*. L. Fr. Against the will; in spite of; notwithstanding. *Kelham*. A contraction of *mal gree*, (q. v.) Used by Littleton in its modern form, *maugre*. *Litt. sect.* 672.

MAHEME, *Mahem*. L. Fr. Maihem. *Britt.* c. 25.

MAHEMIARE. L. Lat. In old English law. To maim. *Bract.* fol. 144 b, 145. *Mahemiator*; a maimer; the maimer. *Fleta*, lib. 1, c. 40, § 4.

MAHEMIUM. L. Lat. In old English law. Maihem. *Mahemium dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum*; it may be called maihem, when any person is in any part of his body disabled [made useless] to fight. *Bract.* fol. 145. *Fleta* copies this passage with the following modification: *Mahemium dici poterit, ubi aliquis in aliqua parte sui corporis læsionem acceperit per quam effectus sit, &c.* *Fleta*, lib. 1, c. 40.

A blemish or fault. *Fleta*, lib. 2, c. 58, § 6. See *Id.* lib. 1, c. 34, § 24.

**MAIEREMIUM.** L. Lat. In old English law. Wood or timber. *Fleta*, lib. 2, c. 41, § 9.

**MAILBRIEF.** Germ. In maritime law. A contract for the building of a vessel, specifying the denomination and size of the vessel, the time when she is to be completed, and the time and manner of payment. *Jacobsen's Sea Laws*, 2—8. There is no corresponding term for this contract in English.

**MAIDEN.** In Scotch law. An instrument formerly used in beheading criminals. It resembled the French guillotine, of which it is said to have been the prototype. *Wharton's Lex.*

**MAIDEN ASSIZE.** In English practice. An assize at which no capital conviction takes place. In such a case, the sheriff of the county presents the judges with white gloves. *Wharton's Lex.*

**MAIDEN RENTS.** In English law. A fine paid by the tenants of some manors on their marriage, and said to have been given to the lord for his omitting the custom of the *marcheta*, (q. v.) *Cowell. Blount.*

A fine paid for license to marry a daughter. *Id.*

**MAIHEM, Mayhem, Mahem, Maim.** [L. Fr. *mahem, maheme*; L. Lat. *mahemium, maihemium, machamium, mechamium*; Sc. *manzie*.] In criminal law. The violently depriving another of the use of a member proper for his defence in fight. 3 *Bl. Com.* 121. The violently depriving another of the use of such of his members as may render him the less able in fighting, either to defend himself or to annoy his adversary. 4 *Id.* 205. Such as the cutting off, or disabling or weakening a man's hand or finger, or striking out his eye or foretooth. *Id. ibid.* But breaking a molar tooth, or cutting off an ear or nose, is no maihem at common law, because they do not weaken, but only disfigure him. *Id.* 206. These rules are taken, with very little change, from Bracton. *Bract.* fol. 145. See *Britt.* c. 25. *Fleta*, lib. 1, c. 40. *Wharton's Am. Crim. Law*, b. 4, ch. 4.

**MAIHEMARE.** L. Lat. In old English law. To maim. *Keilw.* 95.

**MAIHEMIUM.** L. Lat. In old criminal law. Maihem. *Maihemium est membri mutilatio; et dici poterit ubi aliquis in aliquâ parte sui corporis effectus sit inutilis*

*ad pugnandum.* Maihem is the mutilation of a member; and it may be called maihem when any person is in any part of his body disabled from fighting. *Co. Litt.* 126. This is a quotation from Bracton, who writes the word *mahemium*, (q. v.)

*Maihemium est inter crimina majora minimum, et inter minora maximum.* Maihem is the least among the greater crimes, and the greatest among the lesser. *Co. Litt.* 127.

*Mahemium est homicidium inchoatum.* Maihem is inchoate homicide. 3 *Inst.* 118.

**MAIL, Maile, Maill.** [plur. *maills, meals, mealis*.] Sc. In Scotch law. Rent; a rent or tribute. A tenant who pays a rent (*firmarius*), is called a mail-payer, mailer or mail-man. *Skene de Verb. Sign. voc. Firmarius.*

**MAILE, Maille, Maylle, Mail.** L. Fr. In old English law. A half-penny. *Litt.* sect. 235, 565. *Britt.* c. 4, 30. *LL. Gul. Cong.* l. 4.

**MAILE.** In old English law. A tribute, a rent. *Spelman.* See *Black mail.*

**MAILS AND DUTIES.** In Scotch law. The rents of an estate. *Bell's Dict.*

**MAIM.** An old form of maihem. *Finch's Law*, b. 3, c. 12.

**MAIN.** Fr. [from Lat. *manus*.] A hand. More commonly written *meyn*, (q. v.)

**MAIN-A-MAIN.** L. Fr. Immediately. *Kelham.*

**MAINABLE.** L. Fr. Amenable; dis-trainable. *Kelham.*

**MAINBOUR, Manburnie.** Fr. and Sax. [from Fr. *main*, hand, and Sax. *borh*, pledge.] In old French law. Pledge; a pledge or surety. Answering to the Sax. *handborow*, (q. v.) and English *mainprise*, (q. v.) *Spelman.*

**MAINOUR, Manour, Meinour, Meynour, Meynovere.** L. Fr. [from *manier*, to handle.] In old English law. A thing that a thief takes away or steals. *Cowell.* A thing in hand.\* A thief was said to be "taken with the mainour," when he was taken with the thing stolen about him, or, as it were, in his hand. *Cowell. Pl. Cor.* 179, 149, 186, 194. *Stat. Westm.* 1, c. 15. 2 *Inst.* 188. 4 *Bl. Com.* 307. 3 *Id.* 71. The word seems to have corresponded with the Sax. *handhabend*, (q. v.) The expression "taken with the mainour," is a close translation of the *cum manuopere captus* of *Fleta*, (lib. 2, c. 52, § 42,) and the *pris ove*

*meynovere* of the statute of 1 Hen. IV. c. 20; and Mr. Barrington considers *meynovere* to be the true form of the word. *Obs. Stat.* 350. A later form of the expression was, "taken in the mainour (or manor.)" 1 *Show.* 57. *Comb.* 159, 160. The word *mainour* was afterwards corrupted into the English *manner*; and the expression "taken in the *manner*" occurs in some of the books. *Crabb's Hist.* 154.

MAINOVRE, *Maynover*. L. Fr. [from *main*, hand, and *oeuvre*, work.] The labor of the hand; manual labor. *Cowell*. But see *Meynovere*.

MAINPERNABLE. In old English law. That may be let to bail. *Cowell*.

MAINPERNOR, *Maynpernour*, *Meinpernour*. L. Fr. and Eng. [from *main*, hand, and *pernor*, taker; L. Lat. *manucaptor*.] In old practice. A surety for a prisoner's appearance; a kind of bail taken under the writ of *mainprise*. So called, from the prisoner's being delivered into his hand. *Mainpernors*, according to Blackstone, differ from *bail*, in that a man's bail may imprison or surrender him up before the stipulated day of appearance; *mainpernors* can do neither, but are barely sureties for his appearance at the day. *Bail* are only sureties that the party be answerable for the special matter for which they stipulate; *mainpernors* are bound to produce him to answer all charges whatsoever. 3 *Bl. Com.* 128. Other distinctions are made in the old books. See *Cowell*.

MAINPRISE, *Meynprise*, *Maynpryse*, *Mainpris*, *Meynpris*. L. Fr. and Eng. [from *main*, hand, and *prise*, a taking; L. Lat. *manu captio*.] In old practice. The taking or receiving a man into friendly custody, that otherwise is or might be committed to prison, upon security given for his forthcoming at a day assigned. *Cowell*. The old writ of *mainprise* was a writ directed to the sheriff, (either generally, when any man was imprisoned for a bailable offence, and bail had been refused; or specially, when the offence or cause of commitment was not properly bailable below,) commanding him to take sureties for the prisoner's appearance, called *mainpernors*, (q. v.) and to set him at large. 3 *Bl. Com.* 128.

Security for debt. *Il trove mainpris à payer le dett.* *Mem. in Scacc.* H. 24 Edw. I.

MAINSWORN. In old English law. Perjured or forsworn, with one's *hand* (Fr.

*main*,) upon the book. *Hob.* 125. Said to be peculiar to the North of England. *Id. ibid.*

MAINTAINOR. In criminal law. One that maintains or seconds a cause depending in suit between others, either by disbursing money, or making friends for either party towards his help. *Stat.* 19 Hen. VII. c. 14. *Blount*. One who is guilty of *maintenance*, (q. v.)

MAINTENANCE. L. Fr. and Eng. [from Fr. *main*, hand, and *tener*, to hold; L. Lat. *manutentio*, *manutinentia*.] In criminal law. An officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money, or otherwise, to prosecute or defend it. 4 *Bl. Com.* 134. *Termes de la Ley.* 4 *Kent's Com.* 447, note. Literally, a taking in hand; a bearing up, or upholding of quarrels and sides, to the disturbance or hindrance of common right. *Co. Litt.* 368 b. *Champerty* is a species of maintenance, and the terms are frequently used together. See *Champerty*.

MAINTENANT. L. Fr. Presently. *Litt.* sect. 127. *Kelham*.

MAIOR. An old form of mayor. *Mem. in Scacc.* H. 22 Edw. I.

MAIRE. L. Fr. In old English law. Mayor; a mayor. An officer classed with justices and sheriffs. *E à nos justices, viscountes, e maires, e autres ministres.* *Conf. Cartar.* 25 Edw. I.

MAIRE, *Mair*. In old Scotch law. An officer to whom process was directed. Otherwise called "mair of fie [fee,]" and classed with the "serjand." *Skene de Verb. Sign. voc. Recordum*.

MAIRE, *Maere*. L. Fr. Mother. Old forms of *mere*.

MAISTER. An old form of *master*. See the old treatise of the "Maisters of the Chauncerie," in Hargrave's *Law Tracts*.

MAITRE. Fr. In French maritime law. Master; the master or captain of a vessel. *Ord. Mar.* liv. 2, tit. 1, art. 1.

MAJESTAS. Lat. In the Roman law. Majesty; the sovereign authority of the state. *Hallifax, Anal.* b. 3, c. 12, num. 18. The term was applied indifferently to that person, or part of the people, where the supreme authority rested. *Tayl. Civ. Law*, 37.

An offence against sovereignty; more commonly termed *crimen majestatis*, or *crimen læsæ majestatis*. An offence committed against the Roman people, or against its safety. *Dig.* 48. 4. 1. *Cod.* 9. 8.

**MAJESTIE.** L. Fr. Majesty, or high treason. A term used in the Mirror, taken probably from the *majestas* of the Roman law. *Crabb's Hist. Eng. Law*, 302. 2 *Reeves' Hist.* 349.

**MAJOR.** Lat. Greater; the greater. *Major numerus in se continet minorem.* The greater number contains in itself the less. *Bract.* fol. 16.

*Majori summæ minor inest.* In the greater sum the less is included. 2 *Kent's Com.* 618. *Story on Agency*, § 172.

**MAJOR.** Lat. In the civil law. One of full age. *Dig.* 4. 4. 3. 1, 2. *Major annis viginti quinque*; above twenty-five years. *Id.* 4. 4. 43. This word has not, like *minor*, been adopted in English, but the French has *majeure*.

**MAJOR.** L. Lat. [Germ. *mayor*.] In old English law. A mayor. *Spelman.* See *Custos*.

*Major et communitas*; mayor and commonalty. 8 *Co.* 121 b. *Le major et la cominalty.* *Yearb.* T. 10 Edw. III. 3.

**MAJOR ANNUS.** Lat. The greater year; the bissextile year, consisting of 366 days. *Bract.* fol. 359 b.

**MAJORES.** Lat. In old English law. Greater persons; persons of higher condition or estate. *Stat. Marlbr.* pr. *Id.* c. 1. *Fleta*, lib. 2, c. 47, § 13.

**MAJORA REGALIA.** Lat. In feudal law. The greater or higher prerogatives of the crown. 1 *Bl. Com.* 241.

**MAJUS.** Lat. Greater. *Majus est delictum seipsum occidere quam alium*; it is a greater crime to kill one's self than to kill another. 3 *Inst.* 54.

*Majus dignum trahit ad se minus dignum.* The more worthy draws to itself the less worthy. *Co. Litt.* 43, 355 b. *Bract.* fol. 175. *Noy's Max.* 6, max. 18.

*Omne majus continet in se minus.* Every greater contains in itself the less. *Wingate's Max.* 206, max. 59. *Story on Agency*, § 172.

**MAJUS JUS.** L. Lat. In old practice. Greater right, or more right. A plea in the old real actions. 1 *Reeves' Hist.* 476. *Majus jus merum*; more mere right. *Bract.* fol. 31.

**To MAKE.** [Lat. *facere*; Fr. *faire*.] To do or perform; to do in form of law. "To make oath" is to swear in a prescribed form of law. "To make default" is to fail to appear or answer. So in the old phrases "to make the duel," "to make a fine," "to make law," &c.

**To MAKE.** To have effect. "To make for" a party, is to support him. "That case makes for me." *Hardr.* 133, arg. See *Facere, Facit*.

**To MAKE FAITH.** In old Scotch law. To make oath; to swear with the right hand uplifted, that one will declare the truth. 1 *Forbes' Inst.* part 4, p. 235.

**To MAKE LAW.** [L. Lat. *facere legem*; L. Fr. *faire*, or *parfaire ley*.] In old English practice. To deny under oath the statement or charge of a complaining party; such oath being supported by the oaths of a certain number of persons called *compurgators*. Blackstone supposes the meaning of this phrase to be, "to take the benefit which the law has allowed." 3 *Bl. Com.* 341. But law, in this connection, seems to have its ancient technical meaning of *oath*. See *Law, Lex*.

**To MAKE OVER.** In conveyancing. To transfer; to put out of one's possession; to alienate. This expression corresponds with the Gr. *ἐκποιεῖν*, (q. v.)

**MAKING LAW.** In old practice. The formality of denying a plaintiff's charge under oath, in open court, with compurgators. One of the ancient methods of trial, frequently, though inaccurately, termed *waging law*, or *wager of law*. 3 *Bl. Com.* 341. It was the process of complying with wager of law. See *Wager of law*.

**MAKER.** In mercantile law. The person who makes a promissory note. *Story on Notes*, § 3.

**MAL DE VENUE.** L. Fr. Illness in coming. One of the old essoins. See *Malum*.

**MAL GREE.** L. Fr. Against the will; without the consent. *Bon gree ou mal gree le tenant*; with the consent or without the consent of the tenant. *Britt.* c. 41. Hence the single word *malgre*, and more modern *maugre*, (qq. v.) See *Gree*.

**MALA.** Lat. [fem. sing. of *malus*, bad.] Bad. See *Malus*.

**MALA FIDES.** Lat. Bad faith. The opposite of *bona fides*, (q. v.) *Malâ fide*; in bad faith. *Mala fidei possessor*; a possessor in bad faith. 1 *Mackeld. Civ. Law*, 310, 311, § 289.

**MALA GRAMMATICA.** L. Lat. Bad grammar.

*Mala grammatica non vitiat chartam.* Bad grammar does not vitiate a deed. *Wingate's Max.* 18, max. 13. 9 *Co.* 48 a. 2 *Bl. Com.* 379. Neither false English nor bad Latin will destroy a deed, when

the meaning of the party is apparent. *Id. ibid.* The grammatical construction is not always, in judgment of law, to be followed. *Broom's Max.* 299, [535.] See *Bad English*.

**MALA PRAXIS.** L. Lat. Mal-practice; unskilful management or treatment. Particularly applied to the neglect or unskilful management of a physician, surgeon, or apothecary. 3 *Bl. Com.* 122. This is a great misdemeanor and offence at common law. *Id. ibid.* 1 *Ld. Raym.* 214.

**MALA TOLTA.** L. Lat. [L. Fr. *mal toll.*] In old English law. An evil, unjust or oppressive toll or tax; a thing unjustly taken, (*res injuste ablata, seu (ut tunc loquebantur,) tolta vel tulta. Dufresne, Gloss. voc. Tolta mala.*)

**MALA.** Lat. [pl. of *malum*, bad.] Bad or evil things; offences; wrongs. See *infra*.

**MALA IN SE.** L. Lat. Wrongs in themselves; acts morally wrong; offences against conscience. 1 *Bl. Com.* 57, 58. 4 *Id.* 8.

**MALA PROHIBITA.** L. Lat. Prohibited wrongs or offences; acts which are made offences by positive laws, and prohibited as such. 1 *Bl. Com.* 57, 58. 4 *Id.* 8.

**MALE.** Lat. [from *malus*, bad.] Badly; unfavorably. See *Male creditus*.

**MALE.** L. Fr. [from Lat. *malus*, bad.] Bad; ill. See *Malefeasance, Maletolt*.

**MALE CREDITUS.** L. Lat. In old English law. Unfavorably thought of; in bad repute or credit. *Bract.* fol. 116, 154.

**Maledicta est expositio quæ corruptit textum.** That is a cursed interpretation which corrupts the text. 4 *Co.* 35 a, *Bozoun's case.* *Broom's Max.* 268, [480.]

**MALEFACTOR.** Lat. [from *malefacere*, to do wrong.] In old English law. A wrong-doer; an offender; a criminal; a convicted criminal. *Bract.* fol. 104 b. *Fleta*, lib. 1, c. 20, §§ 35, 120.

**MALEFEASANCE, Malfeasance, Malfeasance, Malfeazance, Malfaissance.** L. Fr. and Eng. [from *male*, ill, and *faisance*, a doing; Lat. *maleficium*.] A doing of evil; ill conduct; the doing of what one ought not to do. *Cro. Jac.* 266. 1 *Tidd's Pr.* 4.

**MALE FAME.** L. Fr. Bad character. *Stat. Westm.* 1, c. 12.

**MALEFICIUM.** Lat. [from *malefacere*, to do wrong.] In the civil law. Wrong-doing; wrong; tort; the commission of an

offence; malfeasance. *Inst.* 4. 1, pr. *Bract.* fol. 99, 101, 103.

**Maleficia propositis distinguuntur.** Evil deeds are distinguished from evil purposes. *Jenk. Cent.* 290, case 9. This is the translation given in Branch's Principia; but as used by Jenkins, the proper translation seems to be, "Wicked deeds are distinguished by their purposes." The putting of ratsbane to kill vermin is not felony, although a man should take it and die of it. *Jenk. Cent. ub. sup.*

**MALETOLT, Mal toll, Maletot, Male toute.** L. Fr. [L. Lat. *mala tolta*, q. v.] In old English law. An undue or excessive toll, tribute or imposition. Called in Magna Charta (9 Hen. III. c. 30; Johan. c. 41,) *malum tollum*, or *mala tolta*, an evil toll. Lord Coke translates it *male tent*. *Stat. de Tallagio non concedendo*, c. 3. See *Barr. Obs. Stat.* 174.

**MALETOUTE.** L. Fr. [L. Lat. *mala tolta*.] In old English law. A tax of 40s. on every woosack exported. *Blackst. Mag. Cart.* Intr. xciv. See *Conf. Cartar.* 25 Edw. I. This word was not always used in a bad sense. *Outre le droituel maletoute de demy marke*; over and above the rightful custom of half a mark. *Rot. Parl.* 27 Edw. III. See 2 *How. State Trials*, 425.

**MALFETRIA.** Span. In Spanish law. Offence. *White's New Recop.* b. 2, tit. 19, c. 1, § 1.

**MALICE.** L. Fr. and Eng. [from Lat. *malitia*, q. v.] In criminal law and general practice. Wickedness of purpose; a spiteful or malevolent design against another; a settled purpose to injure or destroy another.

Any formed design of doing mischief. 1 *Hale's P. C.* 455, (Am. ed. note.) 2 *Stra.* 766.—Any evil design in general. 4 *Bl. Com.* 198.—A disposition or inclination to do a bad thing, (*un disposition à faire un male chose*.) 2 *Roll. R.* 461.—General wickedness of heart; inhuman or reckless disregard of the lives or safety of others, as when one coolly discharges a gun, or throws any dangerous missile among a multitude of people, or strikes, even upon provocation, with a weapon that must produce death.\* 4 *Bl. Com.* 199, 200. See *U. S. Digest*, Homicide. *Whart. Am. Cr. Law*, §§ 944—967.

Deliberate disregard of the rights of others; as when one carries on the trade

of melting tallow, to the annoyance of the neighboring dwellings. *Abbott, C. J. 3 Barn. & Cress. 584.*

**Wilfulness.** 4 *Mason's R.* 115. The doing any act without a just cause. 1 *Chitt. Gen. Pr.* 46. Otherwise called malice in law. *Pollock, C. B. 12 Mees. & W. 787. 2 Greenl. Ev. § 453.* Malice, in the legal acceptance of the word, is not confined to personal spite against individuals, but consists in a conscious violation of the law, to the prejudice of another. *Lord Campbell, 9 Cl. & Fin. 321.* Malice, in its legal sense, means a wrongful act done intentionally, without just cause or excuse. *Bailey, J. 4 Barn. & Cress. 255. Shaw, C. J. 9 Metcalf's R. 93, 104, 105. 1 Greenl. Ev. § 34, note.* And malice may not only be presumed from the total absence of probable cause, but also from gross and culpable negligence in omitting to make suitable and reasonable inquiries. *Story, J. 3 Story's R. 1, 7.*

**MALICE AFORETHOUGHT**, otherwise called **MALICE PREPENSE**. [*L. Lat. malitia præcogitata.*] In criminal law. Malice previously and deliberately entertained. This is essential to constitute the crime of murder. 4 *Bl. Com.* 198.

**MALICIOUS ABANDONMENT.** In criminal law. The desertion of a wife or husband without just cause.

**MALICIOUS INJURY.** In criminal law. An injury committed out of spite or ill-will against another; an injury committed wantonly, wilfully, or without cause.\* 1 *Chitt. Gen. Pr.* 136.

**MALICIOUS PROSECUTION.** In practice. The procuring the indictment or arrest of a person, maliciously and without probable cause. 3 *Chitt. Bl. Com.* 126. 1 *Archb. N. Prius*, 446. 3 *Story's R.* 1. *U. S. Digest*, Malicious Prosecution.

**MALITIA.** *Lat.* [from *malus*, bad.] In criminal law. An express evil design. 4 *Bl. Com.* 199. Wickedness of purpose; malice. See *Malice. Malitia excogitata*; meditated malice. *Fleta*, lib. 1, c. 28, § 16. *Malitia præcogitata*; malice aforethought, evil intended beforehand. 4 *Bl. Com.* 198, 200.

**Malitia supplet ætatem.** Malice supplies [or makes up for] age; wickedness of design supplies the want of age. *Dyer*, 104 b. An infant between the ages of seven and fourteen may be guilty of felony and punished capitally, if shown to be

possessed of a mischievous discretion, or to be *doli capax*. 1 *Bl. Com.* 464, 465. 4 *Id.* 22, 23, 212. *Broom's Max.* 149, [232.]

**Malitiis hominum est obviandum.** The wicked or malicious designs of men must be thwarted. 4 *Co.* 15 b.

**MALITIOSE.** *L. Lat.* In old English law. Maliciously. *Comb.* 116.

**MALLARE.** *L. Lat.* [from *mallum*, q. v.] In old European law. To cite or summon to court, (*in mallum vocare.*) *L. Salic.* tit. 52, § 2. *L. Alaman.* tit. 36, § 3. *L. Boior.* tit. 1, c. 11, § 2. *Spelman.*

**MALLOBERGIUM.** *L. Lat.* [from *mallum*, a court, and *bergium*, borough, city or people.] In old European law. A meeting of the people in public or general assembly. *Spelman.*

**MALLUM, Mallus.** *L. Lat.* In old European law. A court of the higher kind, (*placitum majus*), in which the more important business of the county was dispatched by the count or earl, (*comes.*) *Spelman. L. Alaman.* tit. 36, § 3. *Formul. Solen.* 173.

A public national assembly. • 1 *Rob. Charles V.* Appendix, note xl.

*Spelman* considers this word to be of Saxon origin, but the radical import of it to be doubtful. The Sax. *mæl* has the several meanings of an assembly, a plea or plaint, law or judgment, and a banquet.

**MALT TAX.** An excise duty upon malt in England. 1 *Bl. Com.* 313. 2 *Steph. Com.* 581.

**MAL-TOLTE.** *Fr.* In old French law. A term said to have arisen from the usurious gains of the Jews and Lombards, in their management of the public revenue. *Steph. Lect.* 372.

**MALUM.** *Lat.* Evil; wickedness; an evil; an offence or wrong.

**Malum non præsumitur.** Wickedness is not presumed. *Branch's Princ.* 4 *Co.* 72 a.

**Malum quo communius eo pejus.** The more common an evil is, the worse it is. *Branch's Pr.*

**MALUM.** *L. Lat.* [*L. Fr. mal.*] In the old law of essoins. A misfortune; an infirmity; a sudden indisposition, by which a party was prevented from appearing in court when summoned. See *Essoin.*

**Malum lecti;** (*Fr. mal de lit;*) misfortune or sickness of bed; that kind of infirmity or indisposition by which a party was confined to his bed; ordinary sickness

or indisposition. *Spelman. Bract.* fol. 344 b. See *De malo lecti, Essoin.*

*Malum veniendi*; (Fr. *mal de venue*.) misfortune or sickness of [in] coming; sickness or accident happening to a party on his way to court. *Bract.* fol. 339, *et seq.* Called by *Spelman*, *malum viæ*. *Spelman*, voc. *Essoinare*.

**MALUM.** Lat. In the Roman law. A mast; the mast of a ship. *Dig.* 50. 17. 242, pr. Held to be part of the ship. *Id. ibid.*

**MALUM IN SE.** Lat. A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral and public law. *Story on Agency*, § 346. Otherwise called *malum per se*. *Vaugh.* 332.

**MALUM PROHIBITUM.** Lat. A wrong prohibited; an act prohibited as wrongful; an act involving an illegality resulting from positive law. *Story on Agency*, § 346. See *Vaugh.* 330, 332, 358.

**MALUS.** Lat. Bad; evil; wicked; unlawful.

*Malus usus abolendus est.* A bad or invalid custom is [ought] to be abolished. *Litt.* sect. 212. *Co. Litt.* 141. 1 *Bl. Com.* 76. *Broom's Max.* 418, [715.] The qualities of a good custom are enumerated by Blackstone, *ub. sup.* "Every use is evil that is against reason." *Co. Litt.* 141 a.

**MALVEILLES.** L. Fr. Misdemeanours. *Kelham. Cowell.*

**MALVEIS, Malveys.** L. Fr. In old practice. Bad; defective; faulty. *Malveys briefe.* *Yearb.* T. 5 Edw. III. 23. II. 2 Edw. II. 33.

**MALVEIS PROCUROURS.** L. Fr. A term applied, in old statutes, to those who used to pack juries by nomination or other practice. *Artic. sup. Chart.* c. 10. 2 *Inst.* 561.

**MALVERSATION.** [from Lat. *male*, ill, and *versari*, to behave.] Evil conduct; misconduct; corruption or extortion in office. *Webster.*

**MAMIUM.** L. Lat. In old English law. Maim or main; mutilation. *Keilw.* 95.

**MAN.** [Lat. *homo*.] In feudal law. A vassal; a tenant or feudatory. The Anglo-Saxon relation of lord and man was originally purely personal, and founded on mutual contract. 1 *Spence's Chancery*, 37.

**MANAGIUM.** L. Lat. [from L. Fr. *manage*, a dwelling.] In old records. A

mansion house, or dwelling place. *Cowell. Blount.*

**MANASSE.** L. Fr. In old English law. Menace; threat. *Keilw.* 52 b.

**MANBOTE.** Sax. [from *man*, vassal, and *bote*, compensation.] In Saxon law. A pecuniary compensation paid to a lord for killing his *man*, that is, his vassal or tenant. *LL. Inæ*, c. 75. *Spelman. LL. Gul. Cong.* l. 8.

**MANCA.** L. Lat. [Sax. *mancs*.] A Saxon coin of the value of thirty pence. *Spelman*, voc. *Mancusa*.

**MANCARE.** L. Lat. In old European law. To mutilate. *L. Alam.* tit. 12, § 1. *Spelman.*

**MANCEPS.** Lat. In the Roman law. A purchaser, one who took the article sold in his hand, (*qui manu cepit*;) a formality observed in certain sales. *Calv. Lex. Adam's Rom. Ant.* 55. See *Mancipatio*.

A farmer of the public taxes. *Id.*

**MANCIPARE.** Lat. [from *manus*, hand, and *capere*, to take.] In the Roman law. To sell, alienate or make over to another; to sell with certain formalities. See *Mancipatio*.

To sell a person; one of the forms observed in the process of emancipation. See *Emancipation*.

**MANCIPATIO.** Lat. [from *mancipare*, q. v.] In the Roman law. A kind of sale in the presence of five witnesses, accompanied with delivery of possession or seisin; the purchaser taking the thing sold in his hand. It took place among Roman citizens only, and was confined to certain property called *res Mancipi* or *mancipia*. *Calv. Lex. Adam's Rom. Ant.* 55, 58.

The imaginary sale of a son in the ceremony of emancipation; so called, because the natural father gave over (*mancipabat*, i. e. *manu tradebat*) his son to the purchaser, adding these words, *Mancupo tibi hunc filium qui meus est*. *Adam's Rom. Ant.* 52. *Cooper's Just. Inst.* Notes, \*442, 443.

**MANCIPI RES.** Lat. In old Roman law. A name given to one of the leading divisions of private property, the precise meaning of which is not settled. Ulpian defines or describes it as embracing estates in Italy, (*prædia in Italico solo*;) which were acquired by mancipation, usucaption or adjudication, those rights of country estates called servitudes, slaves and working animals. *Calv. Lex.* Gibbon explains it to mean things originally taken in war

(*manu capti*.) and which were sold in the particular form called *mancipatio*, in order to assure the purchaser that they had been the property of an enemy, and not of a fellow citizen. 3 *Gibbon's Rom. Emp.* 176, (Am. ed. 1844.)

**MANCIPIUM.** Lat. In the Roman law. A slave; so called, because *taken* from the enemy by *hand*, (*quod ab hostibus manu capiantur*.) *Dig.* 1. 5. 43. *Inst.* 1. 3. 3. *Cod.* 4. 56, 57. 1 *Bl. Com.* 423.

A sale. The same as *mancipatio*, (q. v.)

**MANCOMUNAL.** Span. In Spanish law. An obligation is said to be *mancomunal*, when one person assumes the contract or debt of another, and makes himself liable to pay or fulfil it. *Schmidt's Civ. Law*, 120.

**MANCUS.** L. Lat. In Saxon law. A coin of the value of thirty pence, or 7s. 6d. *Spelman*.

**MANDAMIENTO.** Span. In Spanish law. Commission; authority or power of attorney. A contract of good faith, by which one person commits to the gratuitous charge of another, his affairs, and the latter accepts the charge. *White's New Recop.* b. 2, tit. 12, c. 1.

**MANDAMUS.** Lat. (We command.) In practice. A writ which issues out of a superior court, directed to any person, corporation, or inferior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court issuing it has previously determined, or at least supposes to be consonant to right and justice.\* 3 *Bl. Com.* 110. It is a high prerogative writ, and of a most extensively remedial nature. *Id. ibid.* Cowen, J. 4 *Hill's* (N. Y.) *R.* 581. It is used principally for public purposes, and to enforce the performance of public rights or duties; as to compel inferior courts to do some act belonging to their duty in order to prevent a delay or denial of justice; to compel the admission or restoration of the applicant to any office or franchise of a public nature, &c. It lies, however, to enforce some private rights when withheld by public officers, as to compel a clerk to record a deed, to compel a corporation to exhibit their books to a corporator, and the like. 3 *Bl. Com.* 110, 264. 3 *Steph. Com.* 681. See the cases in which it lies enumerated in 1 *Chitt. Gen. Pr.* 789—806. *United States Digest*, Mandamus. In general, it can be properly employed only where a party has a legal

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right, and there is no other adequate legal remedy; and it does not lie where a party has a remedy by action. 2 *Cowen's R.* 444. 18 *Wendell's R.* 575. 21 *Id.* 20. 2 *Hill's* (N. Y.) *R.* 45. 5 *Id.* 616. 6 *Id.* 243. And it can issue only in cases where the act to be done is merely ministerial, and with regard to which, nothing like judgment or discretion in the performance of his duties is left to the officer. 17 *Howard's R.* 284.

A *mandamus* has been held to be a *suit*, within the Constitution of the United States; for it is a litigation of a right in a court of justice, seeking a decision. 2 *Peters' R.* 449. 14 *Id.* 564.

The writ derives its name from its emphatic word, when framed in Latin; *Nos igitur—tibi mandamus, firmiter injungendo*, &c. See *Bohun's Instit. Leg.* 163.

**MANDANS.** Lat. [from *mandare*, q. v.] In the civil law. One who gives a thing in charge to another; one who requires, requests or employs another to do some act for him. *Inst.* 3. 27. 1, *et seq.*

**MANDANT.** Fr. [from Lat. *mandans*, q. v.] In French and Scotch law. The employing party in the contract of *mandatum*, or mandate. *Story on Bailm.* § 138.

**MANDARE.** Lat. In old practice. To command. Hence the term *mandamus*, (q. v.) although *præcipere* or *præcipimus*, (qq. v.) was the usual word in writs.

To commit. *Mandare executioni*; to commit to execution, to put in execution. *Clerke's Prax. Cur. Adm.* tit. 58, 59.

To make return to a writ. *Si fraudulenter mandavit quod ille qui attachiari debuit non fuit inventus in ballivâ suâ*; if he has fraudulently returned that he who ought to be attached was not found in his bailiwick. *Bract.* fol. 441 b. *Si vice comes mandaverit*; if the sheriff have returned. *Stat. Westm.* 2, c. 9.

In the civil law. To give in charge; to commit to one's care; to request another to do some act for one. *Dig.* 17. 1. 2. *Qui mandat ipse fecisse videtur*. He who requests [another to do an act for him] is supposed to have done it himself. *Story on Bailm.* § 147.

*Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensionem*. Lawful commands receive a strict interpretation, but unlawful commands a broad and extended one. *Bac. Max.* reg. 16.

**MANDATAIRE.** Fr. In French law.

A person employed by another to do some act for him; a mandatary. *Pothier, Tr. de Mandat*, art. prel. n. 1.

**MANDATARIUS.** Lat. [from *mandare*, q. v.] In the civil law. A mandatary. *Mandatarius terminos sibi positos transgredi non potest.* A mandatary cannot exceed the limits assigned him. *Jenk. Cent.* 53.

**MANDATARY.** [Lat. *mandatarius*, from *mandare*, q. v.] One to whom a charge or commandment is given. *Cowell.*

In the law of bailment. One who is employed by another to do some act for him without reward, in regard to some personal property bailed or delivered to him.\* One who undertakes to do an act for another, without reward. 2 *Kent's Com.* 569, 570.

**MANDATE.** [from Lat. *mandatum*, q. v.] A kind of bailment when one undertakes, without recompense, to do some act for another, in respect to the thing bailed. 2 *Kent's Com.* 568.—A bailment of goods without reward, to be carried from place to place, or to have some act performed about them. *Story on Bailm.* § 5. *Jones on Bailm.* 36. It is also called, after the civil law, *mandatum*, (q. v.) The word *mandate* is borrowed from the Scotch law. See *Bell's Dict.* In old English law, the word *commandment* was used. 2 *Leon.* 75.

In practice. A judicial command; that part or clause of a writ containing the words "We command you," &c.

**MANDATO.** Span. [from Lat. *mandatum*, q. v.] In Spanish law. The contract of mandate. *Escriche, Diccionario Razonado.* *Schmidt's Civ. Law*, 197.

**MANDATOR.** Lat. [from *mandare*, q. v.] In the civil law. One who gives a thing in charge to another; one who employs another to do some act for him in regard to property bailed.\* *Cod.* 8. 41. 10. *Story on Bailm.* § 138. Called, also, *mandans*, (q. v.) In old English law, a commander. 2 *Leon.* 75.

**MANDATUM.** Lat. [from *mandare*, q. v.] In the civil law. That kind of bailment in which the one party (*mandans*,) gives something in charge (*mandat*,) to the other to do for him; and the latter (*mandatarius*,) undertakes to do the act without recompense.\* *Inst.* 3. 27, pr. et per tot. *Dig.* 17. 1. *Cod.* 4. 35. 2 *Kent's Com.* 568. *Story on Bailm.* § 137. *Jones on Bailm.* 36.

In old practice. The mandate or warrant of a court. *Clerke's Prax. Cur. Adm.* tit. 1, 9.

**MANDAVI BALLIVO.** L. Lat. (I have commanded, or made my mandate to the bailiff.) In English practice. The return made by a sheriff, where the bailiff of a liberty has the execution of a writ, that he has commanded the bailiff to execute it. 1 *Tidd's Pr.* 309. 2 *Id.* 1025.

**MANELET.** L. Lat. [Sc. *guld.*] In old Scotch law. A noxious weed growing among corn or grain. *Skene de Verb. Sign.*

**MANENS**, (plur. **MANENTES**.) L. Lat. [from *manere*, to remain or stay.] In Saxon and old English law. A kind of tenant inhabiting a manse, (*mansi incolæ*;) an agricultural tenant, (*qui hydan colit.*) *Spelman.* The ceorls are mentioned in the later Anglo-Saxon charters, under the name of *manentes*. 1 *Spence's Chancery*, 50.

**MANERA.** Span. In Spanish law. Manner or mode. (Lat. *modus*.) *Las Partidas*, part. 4, tit. 4, l. 2.

**MANERIUM.** L. Lat. [from *manere*, to remain or abide.] In old English law. A manor. *Spelman.* *Bract.* fol. 434. See *Fleta*, lib. 6, c. 51. *Manerium dicitur à manendo, secundum excellentiam; sedes magna, fixa et stabilis.* It is called *manor* (*manerium*,) from *manendo*, (abiding,) *par excellence*; a large seat or place of abode, fixed and permanent. *Co. Litt.* 58 a. It might consist of several villis or hamlets. *Fleta*, lib. 4, c. 15, § 9. *Id.* lib. 6, c. 51. *Bract. ub. sup.*

A manor house. *Spelman.* See *Manor*.

**MANIFEST.** In commercial law. One of a ship's papers, containing a specification of the nature and quantity of the cargo laden, the place where it was taken on board, and the port for which it is destined, with other particulars; sometimes called a *sea-letter*.\* *Jacobsen's Sea Laws*, 301. This paper is expressly required for the custom-house by the English and American statutes, which prescribe its form and contents. *Stat.* 3 & 4 *Will.* IV. c. 52. *Act of Congress*, March 2, 1799. 1 *Laws of U. S.* (*Story & Sharswood's ed.*) 573, 593.

**MANIFESTUS.** Lat. Clear; evident; manifest.

*Manifesta probatione non indigent.* Manifest things need no proof. 7 *Co.* 40 b, *Bedell's case.*

**MANIFICUS.** L. Lat. [from *manus*, hand, and *facere*, to do.] In old English

law. Done with the hand; manual. *Opus manificum*; manual work, such as making a hedge or ditch, ploughing, &c. *Fleta*, lib. 2, c. 48, § 3.

**MANNER.** A thing stolen, in the hand of the thief; a corruption of *mainour*, (q. v.)

**MANNING.** [Sax. *maninge*.] A translation of *mannina*; a term used in the barbarian codes to denote a summons or summoning to court. *Spelman*, voc. *Mannina*.

In old records. A day's work of a man. *Cowell*.

**MANNIRE.** L. Lat. [from Sax. *manien*, to summon.] In old European law. To cite or summon to court, (*in legem vocare*.) *L. Salic.* tit. 1, §§ 1, 2, 3. *Spelman*.

**MANOPERA, MANOPUS.** L. Lat. [from *manus*, hand, and *opera, opus*, work.] In old European law. Work done by hand, (*quod manu perficitur*;) manual labor. *Spelman*. The same with *opus manificum*. See *Manificus*.

In old English law. A day's work. *Id.* Used also as the barbarous Latin for *mainour*, (q. v.) *Cowell*.

**MANOR.** [L. Fr. *maner, manoir, manere*; L. Lat. *manerium*, q. v.] In English law. A feudal estate of a noble kind (*feodum nobile*;) granted partly to tenants in consideration of certain services, and partly reserved to the lord for the use of his family, with a jurisdiction over the tenants for the lands granted them; formerly called a barony, and in modern times a lordship, (*dominium*.) *Spelman*.—A district of ground held by a lord or great personage, who kept to himself such parts of it as were necessary for his own use, which were called *terre dominicales* or demesne lands, and distributed the rest to freehold tenants, to be held of him in perpetuity. 1 *Steph. Com.* 202. 2 *Bl. Com.* 90. See 1 *Crabb's Real Prop.* 71, § 88. See *Fleta*, lib. 2, cc. 72—88, for a minute description of a manor and manor life in England, about the time of Edward I.

A franchise, or right to hold courts and have suit and service rendered, or quit rents paid by copyholders and others. 1 *Chitt. Gen. Pr.* 166.

In the United States, a manor is a tract of land occupied by tenants who pay a fee-farm rent to the proprietor, sometimes in kind; and sometimes perform certain stipulated services. In the province of New-York, large tracts of land were for-

merly granted as manors, with all the manorial rights and incidents. In the county of Westchester were the manors of Fordham, Pelham, Scarsdale, Philipsburg, Cortlandt and others. The manorial tenures in other parts of the State have occasioned much litigation, but have, with some modifications, continued to the present day.

*Spelman* derives this word, through the L. Lat. *manerium*, from *manendo*, (remaining, or abiding,) because the lord was accustomed to reside permanently (*manere*) on the manor as well as the tenants; and hence the latter were anciently called *manentes*. Lord Coke suggests the same etymology, though he prefers another from the Fr. *mesner*, to guide, the tenants being under the lord's guidance and direction. *Co. Litt.* 58 a. *Co. Cop.* sect. 31. See *Manerium*.

**MANRENT.** In Scotch law. The service of a man or vassal. A bond (band or letter) of manrent was an instrument by which a person, in order to secure the protection of some powerful lord, bound himself "in manrent and service to be leil and trew man and servant" to such lord, specifying the services. Sir Walter Scott, who has given some forms of these bonds, observes that the proper spelling is *manred*. *Minstrelsy of Scottish Border*, "Lord Maxwell's Goodnight." Skene calls homage "a band of man-rent." *De Verb. Sign.* voc. *Homagium*.

**MANSA.** L. Lat. The same as *mansus*, (q. v.)

**MANSE.** [L. Lat. *mansa, mansus, mansum*, qq. v.] In old English law. A habitation or dwelling, generally with land attached. *Spelman*, voc. *Mansus*.

A residence or dwelling-house for the parish priest, (*mansus presbyteri*;) a parsonage or vicarage house. *Paroch. Ant.* 431. *Cowell*. Still used in Scotch law, in this sense. *Bell's Dict.*

**MANSELLUM.** L. Lat. In old European law. A little manse or dwelling. *Marculf.* lib. 2, form. 36. *Spelman*.

**MANSIA.** L. Lat. In Saxon law. A dwelling; a country habitation, (*sedes rustica*;) embracing not only buildings, but sufficient land for the support of a family. *Chart. Reg. Kenulph.* cited in *Spelman*.

**MANSIO.** L. Lat. [from *manere*, to stay.] In old European law. An inn; a place of entertainment and accommodation for travellers. *Capitul. Carol.* lib. 6, c. 81. *Formul. Solen.* 33. *Spelman*.

In old English law. A dwelling; a mansion; which might be constructed of several houses, (*mansio esse poterit constructa ex pluribus domibus.*) *Bract.* fol. 434. See the distinction between *mansio* and *manerium*. *Id. ib.* *Fleta*, lib. 6; c. 51.

**MANSION.** [from Lat. *mansio*, q. v.] A dwelling-house. 1 *Chitt. Gen. Pr.* 167.

In old English law. Residence; dwelling. "Mansion or habitation will not indenize him." *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 328.

**MANSION-HOUSE**, in its common sense, not only includes the dwelling-house, but also all out-houses, as barn, stable, cow-house, dairy-house, if they be parcel of the mansion, though they be not under the same roof, or joining or contiguous to it. 1 *Hale's P. C.* 558, 559. 1 *Chitt. Gen. Pr.* 168.

**MANSIUNCULA.** L. Lat. [dimin. of *mansio*, a dwelling.] In old English law. A little dwelling. *Fleta*, lib. 4, c. 22, § 6.

**MANSLAUGHTER.** In criminal law. The unlawful killing of another, without malice, either express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. 1 *Hale's P. C.* 466. 4 *Bl. Com.* 191. See *Wharton's Am. Crim. Law*, §§ 931—933. *Lewis' U. S. Crim. Law*, 348, *et seq.*

This term is a literal translation of the L. Lat. *homicidium*, though it does not fully answer to the English *homicide*, being only a species of that crime.

**MANSUETUS.** Lat. [from *mansuescere*, to tame.] In the civil law. Tame; tamed; as though accustomed to come to the hand, (*quasi ad manum venire* suetus.) *Dig.* 3. 1. 1. 6. *Festus*, 9. 2 *Bl. Com.* 391. *Bract.* fol. 8 b, 9. *Calv. Lex.* The opposite of *ferus*.

**MANSUM.** The same as *Mansus*, (q. v.)

**MANSURA.** L. Lat. In old European law. A dwelling or house; the same as *mansus*, (q. v.) *Spelman*.

**MANSUS**, *Mansum*, *Mansa*. L. Lat. [from *manere*, to stay or dwell.] In old European law. A dwelling with a sufficient portion of land for the support of one family; corresponding with the *familia* of Bede, and the *hida* of the Saxons. Otherwise called *colonica*, (q. v.) a country dwelling. *Spelman*. Montesquieu supposes that it was a particular portion of land belonging to a farm where there were bondmen. *Esprit des Loix*, liv. 30, c. 13.

A portion of land sufficient to be worked by a yoke of oxen for a year. This was the sense of the word in Italy, according to an old vocabulary cited by *Spelman*. The same with the English oxgang (q. v.) or bovate.

A house or dwelling without land; a house in a city; a messuage. *Spelman*.

**MANUCAPERERE.** L. Lat. [from *manus*, hand, and *capere*, to take.] In old law and practice. To become surety; to offer one's self as a surety to redeem another from imprisonment, and to have him in court at an appointed day. *Spelman*. To become bail for another; literally, to *take in hand*. *Cro. Jac.* 97. But see 1 *Stra.* 200, arg.

*Spelman* observes that *manucapere* is the proper correlative of *balliare*, (to bail,) and not its equivalent; the office of the sureties being to *receive* the party into their hands, and to *deliver* him. This corresponds with the technical idea of bail, which is said to be the act of the court. 1 *Salk.* 8. 1 *Tidd's Pr.* 238.

**MANUCAPTIO.** L. Lat. [from *manucapere*, q. v.] In old English law. Manucaption; surety or security. *Fleta*, lib. 1, c. 27, § 18.

**MANUCAPTION.** [L. Lat. *manucaptio*, q. v.] In practice. The same with *mainprise*, (q. v.) which is similarly derived.

**MANUCAPTOR.** L. Lat. [from *manucapere*, q. v.] In old English law. A surety for another's appearance. *Fleta*, lib. 1, c. 26, § 19. The same with *mainpernor*, (q. v.) which is similarly derived. Sometimes applied, as an English word, to ordinary bail. "Manucaptors are but gaolers *pro tempore*." 2 *Show.* 202.

**MANU BREVI.** Lat. With a short hand; shortly; directly; by the shortest course; without circuitry. *Manu longa*; indirectly; circuitously. Terms used by the civilians. *Calv. Lex.*

**MANUFACTURE.** [from Lat. *manus*, hand, and *factura*, a making.] The process of making a thing by art. Buller, J. 2 *H. Bl.* 463, 471.

A thing made by art. *Id. ibid.*

**MANUFIRMARE.** L. Lat. In old European law. To confirm with one's hand or signature, (*subscribendo roborare.*) *Spelman*.

**MANU FORTI.** Lat. With strong hand. A term used in old writs of trespass. *Manu forti et cum multitudo gentium*; with strong hand and multitude of people. *Reg. Orig.* 183.

**MANUMISSION.** [Lat. *manumissio*, from *manumittere*, q. v.] In the Roman law. The giving a slave or bondman his liberty; the discharging one from the power of another. *Manumission*, as explained by Ulpian in his Institutes, was a sending out of *hand*, (*de manû missio*;) that is, a giving of liberty, (*datio libertatis*.) As long as a person was in servitude, he was subject to the *hand* and power of his master, (*manui et potestati suppositus est*;) but when manumitted, he was released from such power, (*manumissus liberatur potestate*.) *Dig.* 1. 1. 4. This passage is copied in the Institutes of Justinian, with a slight variation. *Inst.* 1. 5, pr.

In old European law. The enfranchisement of a slave; the freeing a villein out of his bondage. 1 *Rob.* Charles V. 32, and Appendix, note xx. *Fleta*, lib. 4, c. 11, §§ 17, 21. *Cowell*.

**MANUMITTERE.** Lat. [from *manus*, the hand, and *mittere*, to send.] In civil and old European law. To set free; to send, dismiss or discharge *out of the hand*, or power; to manumit. *Fleta*, lib. 4, c. 11, §§ 17, 21. See *Manumission*. *Manumittere idem est quod extra manum vel potestatem ponere*; to manumit is the same as to put out of the hand or power. *Co. Litt.* 157.

**MANUOPERA.** L. Lat. An old form of *mainour*, (q. v.) Stolen goods taken upon a thief apprehended in the fact. *Cowell*. Properly, *manuopere*, (abl. of *manuopus*.) *Cum manuopere capti*; taken with the *mainour*. *Fleta*, lib. 2, c. 52, § 42.

**MANUPASTUS.** L. Lat. [L. Fr. *maynpast*.] In old English law. A household, or family. *Spelman*. *Bract.* fol. 124 b. *Fleta*, lib. 2, c. 52, § 7.

A domestic servant. *Spelman*. *Vaugh.* 115.

**MANUPES.** L. Lat. In old records. A foot of full and legal measure. *Cart. Ric.* I. cited in *Cowell*.

**MANURABLE.** [from *manure*, q. v.] In old English law. Capable of being had or held in hand; capable of manual occupation; capable of being cultivated; capable of being touched; tangible; corporeal. "Corporeal things are such as are *manurable*." *Hale's Anal.* sect. xxiv.

**MANURE.** L. Fr. and Eng. [from *main*, the hand.] In old English law. To occupy; to use or cultivate; to have in manual occupation; to bestow manual la-

bor upon. "Let him keep it [the tenement] a year and a day without *manuring*." "He shall enter and *manure* those lands and tenements as his own." *Cowell*, voc. *Gavelet*. Perhaps another form of *mainorverer*, to work with the hand.

**MANUS.** Lat. and L. Lat. In old English law. A hand. An oath, as taken with the *hand* on the Gospels. *Spelman*.

A person making oath; a compurgator. *Jurare duodecima manu*; to swear by the twelve-hand; to swear by the oaths of twelve, that is, eleven compurgators besides the party himself.

A degree or condition. *Manûs mediæ*; of a middle rank. *Manûs infimæ*; of the lowest class. *Cowell*.

In the civil law. Power or authority. See *Manumission*.

**MANUS MORTUA.** L. Lat. A dead hand; mortmain. *Spelman*.

**MANUTENENTIA.** L. Lat. In old English law. Maintenance. *Spelman*, voc. *Manutenere*.

**MANUTENERE.** L. Lat. [from *manus*, the hand, and *tenere*, to hold; Fr. *maintenier*.] In old English law. To maintain; to support, assist or defend; to take one's part; to assist one in carrying on his suit. *Spelman*. *Manutenere placitum—querelam*; to maintain one's plea—plaint. *Reg. Orig.* 182, 189. *Fleta*, lib. 2, c. 66, § 23.

*Spelman* supposes this word to have been introduced by the Normans.

**MANWORTH.** In old English law. The price or value of a man's life or head. *Cowell*.

**MANZIE.** Sc. [L. Lat. *machamium*.] In old Scotch law. Maihem; mutilation of the body of a person. *Skene de Verb. Sign.* voc. *Machamium*.

**MARA.** L. Lat. In old records. A mere or moor; a lake, pool or pond; a bog or marsh that cannot be drained. *Cowell*. *Blount*. *Spelman*.

**MARAS, Mares, Marreys, Maries, Marrys.** L. Fr. A marsh, or marshy ground.

**MARASTRE.** L. Fr. A mother-in-law. *Kelham*. A step-mother. *Britt.* c. 119.

**MARCA.** L. Lat. A mark; a coin of the value of 13s. 4d. *Spelman*. See *Mark*.

**MARCA, Marcha, Marchia.** L. Lat. A limit or bound; a boundary line or border. *Spelman*.

**MARCATA.** L. Lat. [from *marca*, q. v.] In old English law. That which is

of the value of a mark; a mark's worth. *Glanv. lib. 12, c. 5.*

Land of the annual value or income of one mark. *Spelman.*

**MARCH.** In Scotch law. A boundary line, or border. *Bell's Dict.* The word is also used in composition; as *march-dike*, *march-stone*.

**MARCHE.** L. Fr. A market. *Britt. c. 2. Stat. Westm. 1, c. 23, 31.*

**MARCHERS.** In old English law. Noblemen who lived on the marches of Wales or Scotland, and who, according to Camden, had their private laws, as if they had been petty kings; which were abolished by the statute 27 Hen. VIII. c. 26. Called also Lords Marchers. *Cowell.*

**MARCHES.** [L. Lat. *marchia*; Lat. *limites, confinia, contermina.*] Limits; confines; bounds or borders; particularly the borders between England and Wales, and those between England and Scotland. *Cowell. Litt. sect. 156. Co. Litt. 106 b.* See *Bacon's Arg. Jurisdiction of the Marches, Works, iv. 257.*

**MARCHIETA, Marchetum, Merchetum, Marchet, Merchet.** In old Scotch law. A custom for the lord of a fee to lie the first night with the bride of his tenant. Abolished by Malcolm III. *Skene de Verb. Sign. Spelman. 2 Bl. Com. 83.*

A fine paid by the tenant for the remission of such right, originally a mark or half a mark of silver. *Spelman.*

In old English law. A fine paid for leave to marry, or to bestow a daughter in marriage. *Cowell.*

The etymology of this word is variously given; from Germ. and old Scotch *march*, a horse; Lat. *marca*, a mark; and Brit. *merch*, a maid. *Spelman.* The first of these is approved by Skene. *De Verb. Sign.*

**MARCHIA.** L. Lat. In old English law. A march, or border. *Spelman, voc. Marca.* The border between England and Wales. *Mag. Cart. Joh. c. 56.*

In feudal law. The dignity or territory of a *marchio*. *Feud. Lib. 1, tit. 14. Lib. 2, tit. 10.*

**MARCHIARE.** L. Lat. In old records. To adjoin, or border upon. *Cowell.*

**MARCHIO.** L. Lat. In old records. An inhabitant of a border, or border district. *Spelman.*

In English law. A marquess. 1 *Bl. Com. 397. Bacon's Arg. Jurisdiction of Marches.*

In old German law. A margrave, (*comes limitaneus.*) *Calv. Lex. Skene de Verb. Sign. voc. Baro.*

In feudal law. One who was invested with the fief or dignity called a *marchia*. *Feud. Lib. 2, tit. 10.*

**MARCULFUS.** A monk of the seventh century, whose collections of *Formulae*, (embracing forms both judicial and extra-judicial) is of great celebrity. 1 *Mackeld. Civ. Law, 79, § 91. Steph. Plead. Appendix, Note (2.)*

**MARE.** Lat. The sea. *Mare Græcorum*; the sea of the Greeks, or Grecian Sea; the Mediterranean. *Bract. fol. 338.*

**MARE CLAUSUM.** Lat. The sea closed, or close, that is, not open or free. The title of Selden's great work, intended as an answer to the *Mare Liberum* of Grotius; in which he undertakes to prove the sea to be capable of private dominion. 1 *Kent's Com. 27. Hargr. Law Tracts, 10.*

**MARE LIBERUM.** Lat. The sea free. The title of a work written by Grotius against the Portuguese claim to an exclusive trade to the Indies, through the South Atlantic and Indian oceans; showing that the sea was not capable of private dominion. 1 *Kent's Com. 27.*

**MAREMIUM, Maresmium, Maresnium.** L. Lat. [from Fr. *marreim, marrein, or marisne.*] In old English law. Timber. *Co. Litt. 53 a.* See *Mæremium.*

**MARESCALCIA.** L. Lat. In old English law. Marshalsea; the office of marshal. A species of grand serjeanty, granted in fee to the Earl [now Duke] of Norfolk. *Fleta, lib. 2, c. 4, § 1.*

**MARESCALLUS, Marescalcus, Marascalcus, Mariscaldus.** L. Lat. [from Teut. *murre*, or *march*, a horse, and *schalt*, an attendant or servant.] In old European law. A horse-keeper or hostler; a groom of the stable, (*equorum minister, agaso, stabularius.*) One who had charge of a certain number of horses. *Spelman. L. Alaman. c. 79. Capitul. Carol. Calv. c. 13.* A marescal, mareshal, or marshal.

An officer of the imperial stable, who served under the *comes stabuli*. *Spelman.* A riding master, or equerry. *Id.*

A military officer who acted as inspector and quartermaster; and whose duty was to array or marshal the host in order of battle, and to lead the van, particularly as commander of the cavalry; (*hostem lustrare, castrametationi locum seligere, pugnæ ineundæ rationem decernere, primam aciem*

*educere, equestribusque præfectus turmis, pugnae initium accendere.*) *Spelman*. See *Fleta*, lib. 2, c. 4, § 3.

In old English law. An officer of the palace or royal household, who guarded the sovereign's person, and maintained the peace of the household. *Spelman*. See *Fleta*, lib. 2, cc. 4, 5, 15.

An officer of the Court of Exchequer. *Id.* lib. 2, c. 30.

An officer of a manor. *Id.* lib. 2, c. 74.

A high officer of state, with certain judicial powers. See *Marshal*.

A ministerial office of justice. See *Marshal*.

MARESCHAUCIE. L. Fr. Marshal-sea; the office or jurisdiction of the marshal or marshal. *Britt.* fol. 1 b.

MARESHAL. L. Fr. Marshal; a high officer of the royal household. *Britt.* fol. 1 b.

MARETTUM. L. Lat. [from *mare*, the sea, and *tegere*, to cover; or from Fr. *marel*, a marsh.] In old English law. A moorish and gravelly ground, which the sea covers and overflows at a full sea. *Co. Litt.* 5 a. Lord Hale applies the term to the shore as covered by the ordinary flux of the sea. *Hale de Jur. Mar.* pars 1, c. 6.

MARGINAL NOTE. In Scotch conveyancing. An addition made to a deed, and put on the margin of the deed, either where there has been an omission in transcribing the deed, or where the parties have made an alteration in their original intention. *Bell's Dict.*

MARI, *Mary*, *Marrie*. L. Fr. [from Lat. *maritus*.] A husband. *Britt.* c. 106, 107.

MARRIAGE. L. Fr. [from *marier*, to marry.] In old English and feudal law. The right of marriage; the power of disposing of an infant ward in matrimony. *Britt.* c. 67.

A marriage portion. *Id.* c. 103. *Kelham*.

MARIER. L. Fr. To marry. *Ne se pussent marier sans nostre conge*; may not marry without our leave. *Britt.* c. 67.

*Marie*; married. *Marie ou dismarie*; married or unmarried. *Yearb. M.* 9 Edw. III. 43.

MARINARIUS. L. Lat. In old records. A mariner; a seaman. *Cowell*.

MARINELLUS. L. Lat. In old English law. A mariner. *Mem. in Scacc.* P. 24 Edw. I.

MARINE INSURANCE. A contract of indemnity against the perils of the sea. 1 *Duer on Ins.* Introd. Disc. Lect. 1.—A

contract whereby, for a consideration stipulated to be paid by one interested in a ship, freight or cargo, subject to the risks of marine navigation, another undertakes to indemnify him against some or all of those risks, during a certain period or voyage. 1 *Phillips on Ins.* 1.—A contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils or sea-risks to which his ship, freight and cargo, or some of them, may be exposed during a certain voyage, or a fixed period of time. 3 *Kent's Com.* 253.

*Maris et feminae conjunctio est de jure naturæ*. The union of male and female is by [founded on] the law of nature. 7 *Co.* 13 b, *Calvin's case*.

MARISCUS. L. Lat. [from Fr. *mares*, or *marets*.] In old English law. A marsh, or marish, as Coke writes it; a fen. *Co. Litt.* 4 a, 5 a. *Shep. Touch.* 95. *Fleta*, lib. 2, c. 41, § 2.

MARITAGIUM. L. Lat. In feudal and old English law. Marriage; the right of a lord to dispose of his infant ward in matrimony. *Bract.* fol. 88 b, 89. *Maritagium habere*; to have the free disposal of an heiress in marriage. *Cowell*.

A portion given with a woman to her husband in marriage. *Glanv.* lib. 7, c. 1. 1 *Reeves' Hist.* 103. *Spelman*. *Terra quæ sic datur propter nuptias dicitur maritagium*; land which is thus given on account of marriage, is called *maritagium*. *Bract.* fol. 21. *Fleta*, lib. 3, c. 11.

MARITARE. L. Lat. In old English law. To marry. *Magna Charta*, c. 7.

MARITIMA ANGLIÆ. L. Lat. In old English law. The emolument or revenue coming to the king from the sea, which the sheriffs anciently collected, but which was afterwards granted to the admiral. *Pat.* 8 Hen. III. m. 4. *Spelman*.

MARITIMA INCREMENTA. Lat. In old English law. Marine increases. Lands gained from the sea. *Hale de Jur. Mar.* pars 1, c. 4.

MARITIME CAUSES. Causes of action originating on the high seas, or growing out of maritime contracts. 1 *Kent's Com.* 367—380.

MARITIME LAW. [Lat. *jus maritimum*.] The law of the sea; sea law. Otherwise termed *commercial law*, and *marine law*. 3 *Kent's Com.* 1—20. Sometimes considered as a branch of commercial law, relating more particularly to navigation, the ownership and employment of

vessels, the rights and duties of seamen, &c.

**MARITUS.** Lat. A husband; a married man. *Calv. Lex.*

**MARK.** [L. Lat. *marca*, from Sax. *mearc*, a mark or sign.] In Saxon law. A silver coin of the value of thirty pence, or 2s. 6d. *Co. Litt.* 294 b. More properly called *mancus*. *Spelman*, voc. *Marca*.

In old English law. A silver coin of the value of 13s. 4d. *Id. ibid.*

**MARK.** In conveyancing. A character made by illiterate or disabled persons, in executing deeds, affidavits and other writings. Usually the sign of the cross, made in a blank space left for that purpose, in the middle of the name as written for the party. An old Saxon custom, as Blackstone observes. 2 *Bl. Com.* 305.

In England, and most of the United States, a mark is a sufficient signature to a will. 8 *Ad. & Ell.* 94. 3 *Nev. & Per.* 228. 3 *Curteis' R.* 752. 5 *Johns. R.* 144. 1 *Williams on Exec.* 63. 1 *Jarman on Wills*, 69, (112, Perkins' ed. note.) 2 *Greenl. Ev.* § 674. In Pennsylvania, it has been held insufficient. *Purdon's Dig.* 971. (But see *Id.* 844, § 7, ed. 1857.) 7 *Penn. Law Journ.* 21.

**MARKET.** [O. Sc. *mercat*; L. Fr. *marche*; L. Lat. *mercatum*, *mercatus*, *mercatus*, from *merx*, merchandise.] In English law. A place for the public sale of commodities; a place of public traffic; (*locus publicæ mercationis*.) *Spelman*.

In English law. The franchise or privilege by which a town is enabled to keep a market. *Cowell. Blount.* 1 *Crabb's Real Prop.* 525, § 679. Every fair is a market, but not *à contra*. 2 *Inst.* 401.

**MARKET OVERT.** [Fr. *overt*, open.] In English law. Open market; a place or shop for the open sale of goods.\* "An open, public and legally constituted market." *Jervis, C. J.* 18 *C. B.* (9 *J. Scott*), 601. The market place or spot of ground, set apart by custom for the sale of particular goods is, in the country, the only market *overt*; but in London, every shop in which goods are exposed publicly to sale is market *overt*, for such things only as the owner professes to trade in. *Godb.* 131. 5 *Co.* 83. 2 *Bl. Com.* 449.

These markets are of Saxon origin, and depend on custom; and it is a general rule of law that all sales and contracts of any thing vendible in fairs or markets *overt*, shall not only be good between the parties,

but also be binding upon those that have any right or property therein. 2 *Bl. Com. ub. sup.* See the exceptions to this rule stated, *Id.* 449—451. 2 *Steph. Com.* 124—126. 1 *Crabb's Real Prop.* 528—530, § 682. In American law, markets *overt* are not recognised. 1 *Johns. R.* 471, 480. 2 *Kent's Com.* 324.

**MARKET TOWN.** In English law. A town entitled to hold a market. 1 *Steph. Com.* 115.

**MARKET ZELD,** (properly *Market geld*.) In old records. The toll of a market. *Cowell*.

**MARKSMAN.** In practice and conveyancing. One who makes his mark; a person who cannot write, and only makes his mark in executing instruments. *Arch. N. Pract.* 13. 2 *Chitt. R.* 92. See *Mark*.

**MARLA.** L. Lat. In old English law. *Marl. Fleta*, lib. 2, c. 76, § 2. *Marlare*; to *marl*. *Id. ibid.*

**MARLBIDGE,** *Statute of.* A celebrated English statute, passed in the fifty-second year of the reign of Henry III. A. D. 1267, at Marlbridge, afterwards called Marlborough, a town in Wiltshire; containing provisions in regard to tenures, and for the better administration of justice, abolishing fines for beau-pleader, introducing the writ of entry in the *post*, &c. 2 *Reeves' Hist.* 62—76. *Crabb's Hist.* 156, 157. In *Fleta*, it is called the statute of Marleberge. Lib. 2, c. 66, § 18; c. 47, § 13. Whether Marlbridge was the same with the present Marlborough, has been doubted. *Barringt. Obs. Stat.* 66.

**MARLERA.** L. Lat. In old English law. A *marl-pit*. *Cart. de Forest.* c. 12.

**MARLERIUM, MARLETUM.** L. Lat. In old records. A *marl-pit*. *Blount. Spelman*.

**MARQUE.** Fr. and Eng. [from Germ. *mark*, a boundary.] In public law. The frontier, border or boundary line of a country. See *Marches, Letters of Marque*.

Permission to pass the frontier of a country, in order to make reprisals. 1 *Bl. Com.* 258. Generally used as synonymous with *reprisal*. *Id. ibid.*

**MARQUESS, Marquis.** [L. Lat. *marchio*; from Germ. *mark*, a border.] In English law. A degree of nobility next to that of duke. So called from the ancient office of the marquess to guard the frontiers and limits [*marches* or borders] of the kingdom, particularly those on the

side of Wales and Scotland. 1 *Bl. Com.* 397.

**MARR'**. Abbrev. of *marescallo*. A word written on the margin of old records on *habeas corpus*. Selden, arg. 3 *How. St. Trials*, 105.

**MARRIAGE**. [L. Fr. *mariage*; Lat. *matrimonium*, *nuptiæ*.] The legal union of a man and woman for life. *Webster*.—The union of a man and woman, in a state of habitual and inseparable intercourse for life; (*vir et mulieris conjunctio, individuum vitæ consuetudinem continens*.) *Inst.* 1. 9. 1.—A contract according to the form prescribed by law, by which a man and woman capable of entering into such contract, mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and wife. *Shelford, Marr. & Div.* 1.

**MARRIAGE**. [L. Fr. *mariage*; L. Lat. *maritagium*.] In feudal law. The power which the lord or guardian in chivalry had, of disposing of his infant ward in matrimony. 2 *Bl. Com.* 70.

**MARRIAGE BROKAGE**. The procurement of a marriage between persons, for a consideration.

The consideration paid or agreed to be paid for bringing about a marriage. See 1 *Story's Eq. Jur.* §§ 260—264.

**MARRIAGE ARTICLES**. Articles of agreement between parties contemplating marriage, intended as preliminary to a formal marriage settlement, to be drawn after marriage. *Atherley on Marriage Settlements*, 92.

**MARRIAGE SETTLEMENT**. A settlement made by a husband out of his estate, before or after marriage, for the benefit of his wife, or of his wife and children. 2 *Steph. Com.* 307. 2 *Kent's Com.* 172—178.—A settlement in writing, usually made before marriage and in consideration of it, by which the estate of either or both of the parties is settled or limited to be enjoyed in a certain way; as upon the husband and issue, or upon the wife and issue, or upon the husband for life, remainder to the wife for life, remainder to the issue, or otherwise, as may be agreed upon. See *Atherley on Marr. Settlements*, 92, et seq. *MacQueen on Husb. & Wife*, 257, et seq.

**MARSHAL**, *Mareschal*. [Sc. *marischall*; L. Fr. *mareschal*, *marescal*, *mariscal*; L. Lat. *marescallus*, *marascalcus*; from Germ. *marc*, a horse, and *schalc*, an attendant.] In English law. The title of

several officers with judicial or ministerial powers; as,

The earl marshal, or lord mareschal, a high officer of state, who presided in the court of chivalry. 3 *Bl. Com.* 68.

The marshal of the king's house, or knight marshal, whose special authority is in the king's palace, to hear and determine all pleas of the crown, and to punish faults committed within the verge, and to hear and judge of suits between those of the king's household. *Holthouse*.

The marshal of the king's bench prison, who had the custody of that prison. *Id.* See *Marescallus*.

In American law. The ministerial officer of the courts of the United States, with duties similar to those of a sheriff. 1 *Kent's Com.* 309.

An officer with duties similar to those of a petty constable.

\* \* The term *marshal*, though of later and humbler origin than *constable*, is derived essentially from the same source; *marascalcus* signifying an attendant upon horses, as *comes stabuli* (afterwards *constabularius*) denoted a superintendent of the stable. See *Marescallus*. Both titles seem to have risen in dignity by a similar progress, which Spelman has distinctly traced. When the *comes stabuli* was advanced to the rank of a military commander, the *marescal* (from his superior skill in the management of horses,) came to be employed in various military capacities; as to inspect the army, to select positions for encampment, to determine the array or order of battle, and finally to lead the van as commander of the cavalry. Rising into higher eminence, the *marshal* finally became an officer of the palace, charged with the protection of the sovereign's person and the preservation of the peace of the household, for which purpose he was allowed to hold a court, and at length became one of the great officers of state. It was at this period of its history that the office, with its title, was introduced into England by the Normans.

Spelman, describing the office as it existed in England in his day, found traces of its original character subsisting in the circumstances that the earl marshal was entitled to receive from every person made a knight, a saddled *palfrey*, and that stray horses were among his perquisites. And see *Fleta*, lib. 2, c. 4, § 4; c. 5, § 8. No affinity, however, can be traced between

the original meaning of the word and its application in modern law. What may now be called its radical meaning dates from the later period, when the marshal, among his other military duties, had the important one of *arraying* the army for battle. Hence "to marshal" now signifies *to set in order*, as in the common equity phrase, "marshalling of assets." So, in popular language, a marshal is a person chosen to *arrange the order*, and direct the route of a procession.

To MARSHAL. To arrange, rank, or set in order. 1 *Story's Eq. Jur.* § 558. See *infra*. A term derived from the ancient office of the marshal. See *Marshal*.

To arrange words in a certain order; to construe. "The law will *marshal* words, *ut res magis valeat*," Hill, B. *Hardr.* 92. "The wisdom of the law useth to transpose words according to the sense; and not so much to respect how the words do take place, but how the acts which are guided by those words may take place." *Bacon's arg.* Case of Revocation of Uses, *Works*, iv. 248. "The law shall *marshal* the acts against the order of the words." *Id. ibid.* "The law will rather invert the words than pervert the sense." *Id.* 249.

MARSHALLING OF ASSETS. In equity. The arranging or ranking of assets in the due order of administration. 1 *Story's Eq. Jur.* § 558.—Such an arrangement of the different funds under administration as shall enable all the parties having equities thereon, to receive their due proportions, notwithstanding any intervening interests, liens, or other claims of particular persons to prior satisfaction out of a portion of these funds. *Id. ibid.*—The arrangement or ranking of assets in a certain order towards the payment of debts. 4 *Kent's Com.* 421.

MARSHALLING OF SECURITIES. In equity. That principle of arrangement by which a party having a lien on or interest in a certain fund, may compel a party having a lien on or interest in the same fund, and also on another fund, to resort, in the first instance, to such other fund for satisfaction, whenever it will not trench upon the rights or operate to the prejudice of the party entitled to the double fund.\* 1 *Story's Eq. Jur.* § 663.

MARSHALSEA. [L. Lat. *marescallia*.] In English law. The court or seat of the

marshal. A court originally held before the steward and marshal of the king's house, and instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service. 3 *Bl. Com.* 76. It is now united with the Palace Court, and held once a week in the borough of Southwark. *Id. ibid.* 3 *Steph. Com.* 444.

MARTE SUO DECURRERE. Lat. To run by its own force. A term applied in the civil law to a suit, when it ran its course to the end, without any impediment. *Calv. Lex. Brissonius*.

MARTIAL LAW. A system of rules for the government of an army, or adopted in times of actual war. An arbitrary kind of law or rule, sometimes established in a place or district occupied or controlled by an armed force, by which the civil authority and the ordinary administration of the law are either wholly suspended, or subjected to military power.\* It is founded on paramount necessity, and proclaimed by a military chief. 1 *Kent's Com.* 341, note. It is quite a distinct thing from *military* law, with which it is sometimes confounded. *Id. ibid.* See *Hale's Hist. Com. Law*, 42, 43, and note, (Runnington's ed.) 1 *Bl. Com.* 413. Lord Loughborough, 2 *H. Bl.* 69, 98.

MARUS. L. Lat. In old Scotch law. A maire; an officer or executor of summons. Otherwise called *præco regis*. *Skene de Verb. Signif.*

MASCULINE. [Lat. *masculus*, from *mas*, male.] Belonging to, or descriptive of the male sex. The masculine frequently includes the feminine; as "man" includes "woman." In the Digests, the rule is laid down in broader terms. *Semper sexus masculinus etiam femininum sexum continet*; the masculine sex always includes the feminine. *Dig.* 32. 62. *Mulorum appellatione etiam mulæ continentur*; under the appellation of mules are included she-mules. *Id. ibid.* *Equis legatis et equæ continentur*; under a bequest of horses are included mares. *Id.* 32. 65. 6.

MASSA. Lat. In the civil law. A mass; an unwrought substance, such as gold or silver, before it is wrought into cups or other articles. *Dig.* 47. 2. 52. 14. *Fléta*, lib. 2, c. 60, §§ 17, 22.

MASSA. L. Lat. In old European law. A manse. The same as *mansus*, (q. v.) *Spelman*, voc. *Mansus*. *Regist.*

*S. Greq.* cited *ibid.* Spelman supposes it to be the origin of the Fr. *mese*, and English *message*.

MAST. To fatten with mast, (acorns, &c.) 1 *Leon.* 186.

MAST-SELLING. In old English law. The practice of selling the goods of dead seamen at the mast. Held void. 7 *Mod.* 141.

MASTER. [L. Fr. *maistre*; from Lat. *magister*, q. v.] One having authority; one who rules, directs, instructs or superintends; one having superior skill to others; a head or chief; an instructor; an employer. Applied to several judicial officers. See *infra*.

MASTER IN CHANCERY, (anciently MASTER OF THE CHANCERY.) [L. Lat. *magister cancellariæ*.] In equity practice. An important officer of courts of equity, who acts as assistant to the chancellor or judge, and whose principal duty consists in *inquiring* into various matters referred to him for the purpose, and *reporting* thereon to the court. *Wharton's Lex. Holthouse.* In England, there are twelve of these masters, of whom the Master of the Rolls is the chief.

These officers were originally the chief clerks of the chancery, (*clerici de prima forma*), who acted as the assessors or council of the Lord Chancellor, (*collaterales et socii cancellarii*.) 2 *Reeves' Hist.* 251. According to Mr. Spence, they obtained the title of *masters* in the reign of Edward III. 1 *Spence's Chancery*, 360. But they appear to have had the title of *præceptores* at a much earlier period. 2 *Reeves' Hist. ub. sup.* *Crabb's Hist.* 184.

MASTER AT COMMON LAW. In English law. An officer of the superior courts of common law, (each court having five,) whose principal duties, when attending court, consist in taking affidavits sworn in court, in administering oaths to attorneys on their admission, and in certifying to the court, in cases of doubt or difficulty, what the practice of the court is. Their principal duties out of court consist in taxing attorneys' costs, in computing principal and interest on bills of exchange, promissory notes and other documents, under rules to compute, in examining witnesses who are going abroad for the purpose of obtaining their testimony, in hearing and determining rules referred to them by the court in the place of the court itself, and in reporting to the court their conclusions with re-

ference to the rules so referred to them. *Holthouse.*

MASTER OF THE CROWN OFFICE. In English law. The Queen's coroner and attorney in the criminal department of the Court of Queen's Bench, who prosecutes at the relation of some private person, or common informer, the crown being the nominal prosecutor. *Wharton's Lex.*

MASTER OF THE ROLLS. [L. Lat. *magister rotulorum*.] In English law. An assistant judge of the Court of Chancery, who holds a separate court ranking next to that of the Lord Chancellor, and has the keeping of the rolls and grants which pass the great seal, and the records of the chancery. He was originally appointed only for the superintendence of the writs and records appertaining to the common law department of the court, and is still properly the chief of the masters in chancery. 3 *Steph. Com.* 417. *Wharton's Lex.*

MASTER OF A SHIP. [Lat. *magister navis*, (q. v.) *navicularius*, *navarchus*, *nauclerus*.] In maritime law. A person having the command of a merchant vessel and the government of her crew; hence commonly styled *captain*. A person entrusted with the care and navigation of a vessel and cargo, appointed by the owner, and acting as his confidential agent.\* 3 *Kent's Com.* 158, 161. *Abbott on Ship.* [118,] 151.

MASURA. L. Lat. [from *massa*, q. v.] In old English law. A house and ground; a piece of ground belonging to a house; a house in a city. *Spelman.*

An old decayed house or wall; the ruins of a building. *Cowell.*

MATE. In maritime law. The next officer to the master on board a vessel, who, on his death, or in his absence, succeeds *virtute officii* to the care of the ship, and the government and management of the crew. 3 *Kent's Com.* 176. He does not, however, cease to be mate in such cases, but has thrown upon him cumulatively the duties of master. *Id. ibid.*

MATERFAMILIAS. Lat. In the civil law. The mother or mistress of a family. *Calv. Lex.*

A chaste or virtuous woman, whether married or a widow. *Matrem familias à ceteris feminis mores discernunt*; morals distinguish a *materfamilias* from other women. *Dig.* 50. 16. 46. 1. *Id.* 48. 5. 10, pr.

**MATERIA.** Lat. In the civil law. Materials; as distinguished from *species*, or the *form* given by labor and skill. *Dig.* 41. 1. 7. 7—12. *Fleta*, lib. 3, c. 2, § 14.

Materials (wood) for building, as distinguished from *lignum*. *Dig.* 32. 55, pr.

**MATERIA.** L. Lat. Matter; substance; subject matter. 3 *Bl. Com.* 322.

**MATERIAL MEN.** In maritime law. Persons who furnish and construct materials for the outfit or repair of vessels. 1 *Kent's Com.* 379. 2 *Id.* 168—170. Such as ship-builders, rope-makers, &c. *Jacobson's Sea Laws*, 357, note. *U. S. Digest*, Material men.

**MATERTERA.** Lat. [Gr. *μητραδελφη*.] In the civil law. A maternal aunt; a mother's sister, (*matris soror*.) *Inst.* 3. 6. 1. *Bract.* fol. 68 b.

**MATERTERA MAGNA.** Lat. In the civil law. A great aunt; a grandmother's sister, (*avix soror*.) *Dig.* 38. 10. 10. 15.

**MATERTERA MAJOR.** Lat. In the civil law. A greater aunt; a great grandmother's sister, (*proavix soror*;) a father's or mother's great aunt, (*patris vel matris matertera magna*.) *Dig.* 38. 10. 10. 16. Called *promatertera*. *Id.* 38. 10. 1. 7.

**MATERTERA MAXIMA.** Lat. In the civil law. A greatest aunt; a great great grandmother's sister, (*abavix soror*;) a father's or mother's greater aunt, (*patris vel matris matertera major*.) *Dig.* 38. 10. 10. 17. Called *abmatertera*. *Id.* 38. 10. 3.

**MATRIMONIAL CAUSES.** In English ecclesiastical law. Causes of action or injuries respecting the rights of marriage. One of the three divisions of causes or injuries formerly cognizable by the ecclesiastical courts; comprising suits for jactitation of marriage, and for restitution of conjugal rights, divorces and suits for alimony. 3 *Bl. Com.* 92—94. 3 *Steph. Com.* 712—714.

**MATRIMONIALITER.** L. Lat. In the way of marriage. *Bract.* fol. 302 b.

**MATRIMONIUM.** Lat. In the civil law. Matrimony; marriage; the conjunction of man and woman, (*maris atque feminx conjunctio*.) *Dig.* 1. 1. 1. 3. Justinian makes it synonymous with *nuptiæ*, and defines them both—*viri et mulieris conjunctio, individuum vitæ consuetudinem continens*, (the union of a man and a woman in a state of habitual and inseparable intercourse during life.) *Inst.* 1. 9. 1. See *Tuyl. Civ. Law*, 268.

**Matrimonia debent esse libera.** Marriages ought to be free. A maxim of the civil law. 2 *Kent's Com.* 102.

**MATRIX ECCLESIA.** Lat. A mother church; a cathedral church, in respect of the parochial churches within the same diocese, or a parochial church, in respect of the chapels depending on her. *Cowell*.

**MATTER IN DEED.** Matter contained in a deed, or writing under seal between two or more parties, which is regarded as a private act. *Co. Litt.* 380 b. *Steph. Pl.* 197. Called by Lord Coke (*ub. sup.*) *matter in fait*.

**MATTER IN PAIS.** Matter in the country. This term is used by Blackstone as synonymous with *matter in deed*. 2 *Bl. Com.* 294. But it is generally distinguished, and applied to matters not transacted in writing. *Steph. Pl.* 197. 2 *Smith's Lead. Cas.* 458.

**Matter en ley ne serra mise en bouche del jurors.** Matter in law shall not be put into the mouth of jurors. *Jenk. Cent.* 180, case 61. Another form of the maxim, *Ad quæstionem legis non respondent iuratores*.

**MATTER OF RECORD.** Matter entered on record, or appearing on the records of a court, comprising all judicial acts; such as a judgment or pleading in an action, a recognizance acknowledged before a court, and the old proceedings by fine, statute merchant, &c. *Co. Litt.* 380 b. *Steph. Pl.* 197.

**MATURITY.** In mercantile law. The time when a bill of exchange or promissory note becomes due. *Story on Bills*, § 329.

**MATURUS.** Lat. Ripe; mature or perfect. *Maturiora sunt vota mulierum quam virorum*; the desires of women are more mature [sooner matured] than those of men. 6 *Co.* 71 a. *Bract.* fol. 86 b.

**MAUGRE.** L. Fr. In spite of; against the will of. *Litt. sect.* 672. See *Malgre, Mal gree*.

**MAUNDER.** L. Fr. [from Lat. *mandare*, q. v.] In old English law. To command. *Stat. Westm.* 1, c. 45.

To return (a writ.) *Id. ibid.* The word occurs in both these senses in the following passage: *Et sil maunde que il ad fait l'execution en due maner,—adonques soit maunde au viscount que, &c.*; and if he return that he hath done execution in due manner,—then shall it be commanded to the sheriff that, &c. *Id. ibid.*

**MAUNGER.** L. Fr. To eat; eating. *Maunger des jurours.* Dyer, 37 b, (Fr. ed.)

**MAUVEISE, Mauveys.** L. Lat. False; fraudulent. *Britt. c. 15. Mauvestie; a fraud. Id. Mauveyement musce; fraudulently concealed. Id. fol. 3 b.*

Bad; defective; informal. *La breve est mauveys.* Yearb. II. 2 Edw. II. 33.

**MAXIM.** [L. Fr. *maxime*; from Lat. *maximus*, greatest.] A general principle; a postulate or axiom; a rule of general or universal application, upon which other rules are founded.\* *Co. Litt. 11 a.* Called by Lord Coke, "a sure foundation or ground of art, and a conclusion of reason;" so called, *quia maxima est ejus dignitas, et certissima auctoritas, atque quod maxime omnibus probetur*; (because its dignity is greatest and its authority most sure, and because it is most highly approved by all.) *Co. Litt. ub. sup.* Lord Bacon observes that "the conclusions of reason of this kind are worthily and aptly called by a great civilian, *legum leges*, laws of laws, for that many *placita legum*, that is, particular and positive learnings of laws, do easily decline from a good temper of justice, if they be not rectified and governed by such rules." *Bacon's Max. Pref.* See 2 *Kent's Com.* 552—555.

**Maxime paci sunt contraria, vis et injuria.** The greatest enemies to peace are force and wrong. *Co. Litt. 161 b.*

"MAY," in the construction of public statutes, is to be construed "*must*" in all cases where the legislature mean to impose a positive and absolute duty, and not merely to give a discretionary power. 1 *Peters' R.* 46, 64. 3 *Hill's (N. Y.) R.* 612, 615. See 9 *Grattan's R.* 391. The word "may," in a statute, means *must* or *shall*, when the public interest or rights are concerned, or the public, or third persons, have a claim, *de jure*, that the power shall be exercised. 1 *Vern.* 153. 1 *Kent's Com.* 467, note. See 24 *Mississippi R.* 657.

**MAYHEM.** Otherwise written *Maihem*, (q. v.)

**MAYN.** L. Fr. A hand; handwriting. *Britt. c. 28.*

**MAYNOVER.** L. Fr. A work of the hand; a thing produced by manual labor. *Yearb. M. 4 Edw. III. 38.*

**MAYOR.** [L. Lat. *major*; L. Fr. *maire*; Germ. *mayr*; from Lat. *major*, greater.] The chief magistrate of a city [or borough.] *Cowell.* The chief officer of a

municipal corporation. *Spelman.* Answering to the *portgreve* and *burgreve* of the Saxons, and the *bailiff* of the Anglo-Normans.

\* \* *Spelman* observes that he did not find this word used in England, prior to the Norman invasion, nor was it applied to any corporation until A. D. 1189, when Richard I. changed the bailiffs of London into a *mayor*; in imitation of which King John, A. D. 1204, made the bailiff of King's Lynn, a *mayor*. The Saxon title of *portgreve*, or *portgerefe*, is given to the chief magistrate of London in a charter granted to the city by William the Conqueror. *Camd. Brit.* 325. See *Portgreve*. According to *Cowell* and *Blount*, (who quote *Camden*,) Richard I. ordained two bailiffs instead of this *portgreve*, and it was John who changed the bailiffs into *mayor*. *Mayor* (*major* or *maior*) had become an ordinary title in the time of *Bracton*. *Bract. fol. 57.* The titles *portreeve* and *boroughreeve* continued in some places down to the passage of the late Municipal Reform Act, 5 & 6 Will. IV.

*Mayor* is derived by *Spelman* from the Lat. *major*, (greater,) denoting that he held the *chief rank* among his colleagues in office, whether aldermen, burgesses or jurats, who anciently constituted his council. This appears to be the true etymology. See *Custos*. *Cowell* and *Blount*, who trace the word to the Brit. *meyr*, make it to be derived from *miret*, to keep or guard. Webster pronounces the derivation from Lat. *major* an error, and traces the word to the Armoric *meur*, and Welsh *maer*, one that keeps or guards.

**MAYORAZGO.** Span. In Spanish law. The right to the enjoyment of certain aggregate property, left with the condition therein imposed, that they are to pass in their integrity perpetually, successively to the eldest son. *Schmidt's Civ. Law*, 62. A species of entail.

**MEAN.** [Lat. *medius*; Fr. *mesne*.] Intermediate. See *Mesne*.

**MEANDER.** To pursue a winding course, as a river or stream.

To follow the course of a stream, according to its windings. To survey a stream according to its actual course. A term in western land law. See 2 *Wisconsin R.* 308, 317, and the statute there cited.

**MEASE, Mese.** [L. Fr. *mese*, *meason*; from Germ. *mesz*.] In old English law.

A message or dwelling-house. *Spelman. Cowell. Finch's Law*, b. 1, ch. 3, num. 28.

**MEASURE OF DAMAGES.** The rule, or rather the system of rules, governing the adjustment or apportionment of damages as a compensation for injuries in actions at law. See *Sedgwick on the Measure of Damages*, passim.

**MEDFEE.** In old English law. A bribe or reward; a compensation given in exchange, where the things exchanged were not of equal value. *Cowell.*

"**MEDALS**," in a will, has been held to pass curious pieces of current coin kept by a testator with his medals. 3 *Atk.* 202. 2 *Williams on Exec.* 1032.

**MEDIA ANNATA.** Span. In Spanish law. Half-yearly profits of land. 5 *Texas R.* 34, 79.

**MEDIA NOX.** Lat. In old English law. Midnight. *Ad mediam noctem*; at midnight. *Fleta*, lib. 5, c. 5, § 31.

**MEDIATOR.** L. Lat. [from *medius*, middle.] In old English law. An arbitrator. *Dyer*, 111.

**MEDICAL JURISPRUDENCE.** The science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice. Otherwise called *forensic medicine*. *Wharton's Lex.* A sort of mixed science, which may be considered as common ground to the practitioners both of law and physic. 1 *Steph. Com.* 8.

**MEDIETAS.** L. Lat. [from *medius*, middle.] In old English law. A moiety; one half. *Fleta*, lib. 2, c. 57, § 10. A half part, divided and separated; as *dimidium* was the half a thing before division. *Latch*, 224. But see 6 *Mod.* 231. Sometimes Englished, *mediety*. 1 *W. Bl.* 490.

**MEDIETAS LINGUÆ.** L. Lat. In old practice. Moiety of tongue; half-tongue. Applied to a jury empanelled in a cause, consisting the one half of natives, and the other half of foreigners. *Comb.* 20. See *De medietate linguæ*.

**MEDITATIO FUGÆ.** Lat. In Scotch law. Contemplation of flight; intention to abscond. 2 *Kames' Equity*, 14, 15. *Bell's Dict.*

**MEDIUM TEMPUS.** L. Lat. In old English law. Mean time; mesne profits. *Cowell.*

**MEDIUS.** Lat. In old English law. Mean; intermediate; between two.

A mesne; an intermediate lord. *Tenens habens medium inter ipsum et capitalem dominum*; a tenant having a mesne between himself and the chief lord. *Stat. Westm.* 2, c. 6. *Fleta*, lib. 2, c. 50.

In old continental law. A man of middle condition. *L. Alam.* tit. 67.

**MEDLETUM, Melletum.** L. Lat. [from *Fr. mesler*, to mix or mingle.] In old English law. A mixing together; a medley or *melee*; an affray or sudden encounter.

An offence suddenly committed in an affray, (*culpa quam quis inopinatè commiserit, rixando et pugnando.*) *Spelman. Glanv.* lib. 1, c. 2. *Bract.* fol. 154 b. The English word *medley* is preserved in the term *chance-medley*.

An intermeddling, without violence, in any matter or business. *Spelman.*

**MEEN.** L. Fr. Mesne; a mesne lord. *Britt.* c. 27.

**MEER.** L. Fr. The sea. *Wreck de meer*; wreck of the sea. *Britt.* c. 21, 33.

**MEES.** L. Fr. A house or dwelling. *Britt.* c. 40, 72, fol. 102 b.

**MEIGNEE, Meiny.** L. Fr. Family; household. *Kelham.*

**MEIN.** L. Fr. A hand. *Meins mises sur seintz*; hands laid upon the holy (Gospels.) *Kelham.*

**MEINDRE AGE.** L. Fr. Minority; lesser age. *Kelham.*

**MEINS.** L. Fr. Less; least. *Kelham.*

**MEITE, Meited.** L. Fr. Moiety; a moiety or half. *LL. Gul. Cong.* ll. 31, 45.

**MEJORADO.** Span. In Spanish law. Preferred; advanced. *White's New Recop.* l. 3, tit. 10, c. 1, § 4.

**MELDFEOH.** Sax. [from *meld*, information, and *feoh*, a reward.] In Saxon law. A reward given to an informer. *LL. Inæ, MS.* c. 20. *Spelman.*

**MELIOR.** Lat. Better; the better. *Melior res*; the better, (best) thing or chattel. *Bract.* fol. 60. See *Potior*.

*Melior est justitia vere præveniens quam severe puniens.* That justice which absolutely prevents [a crime] is better than that which severely punishes it. 3 *Inst. Epil.*

*Melior est conditio possidentis.* The condition of the party in possession is the better one. *Fleta*, lib. 6, c. 39, § 7. *Quum de lucro duorum quærat, melior est causa possidentis.* *Dig.* 50. 17. 126. 2.

*Melior est conditio possidentis, et rei quam actoris.* The condition of the party in possession is the better one, and that of a

defendant is better than that of a plaintiff. 4 *Inst.* 180. *Best on Evid.* 293, § 252.

**Melior est conditio possidentis ubi neuter jus habet.** Where neither has the right, the condition of the party in possession is the better. *Jenk. Cent.* 118, case 36.

**Melioiorem conditionem suam facere potest minor. deterioiorem nequaquam.** A minor can make his condition better, but by no means worse. *Co. Litt.* 337 b.

**MELIORATIO.** Lat. [from *melior*, better.] In old English law. A melioration; a making better; an improvement or betterment. *Bract.* fol. 75. *Stat. Marlbr. pr.* See *Feud. Lib.* 2, tit. 28, § 2.

**MELIUS.** Lat. Better; the better. *Melius averium*; the better [best] beast. *Bract.* fol. 60. *Secundum vel tertium melius*; second or third best. *Fleta*, lib. 2, c. 57, § 1.

**Melius est omnia mala pati quam malo consentire.** It is better to suffer all wrongs, [any wrong] than to consent to wrong. 3 *Inst.* 23, marg.

**Melius est recurrere quam male currere.** It is better to run back than to run badly; it is better to retrace one's steps, than to proceed improperly. 4 *Inst.* 176.

**Melius est in tempore occurrere, quam post causam vulneratam remedium querere.** It is better to meet a thing in time, than after an injury inflicted, to seek a remedy. *Fleta*, lib. 6, c. 37, § 15. 2 *Inst.* 299.

**MELIUS INQUIRENDUM,** (or **INQUIRENDUM**.) L. Lat. (To be better inquired.) In old English practice. The name of a writ issued to the escheator, commanding him to make a further inquiry or to take a new inquisition respecting a matter; as to inquire who was the next heir of a party who died seised of lands, &c. *Reg. Orig.* 293. *F. N. B.* 255 C.

**MELLER.** L. Fr. To mix or blend; to meddle with; to interfere or interpose. *Kelham.*

**MELLETUM, Medletum.** L. Lat. [from L. Fr. *meller*, q. v.] In old Scotch law. Dissension; contest or strife. *Skene de Verb. Sign.* See *Medletum*.

**MEMBRANA.** Lat. In the civil law. Parchment. *Dig.* 32. 52.

In old English law. A skin of parchment. The English rolls are composed of several of these skins; and their contents are frequently distinguished according to the skin on which they are written. Thus, *Mag. Rot. Stat.* membr. 40. *Rot. Cart.*

28 *Edw. I. membr.* 16. *Hale's Hist. Com. Law*, 17.

**MEMORANDUM.** Lat. [from *memorare*, to remember.] To be remembered; be it remembered. A formal word with which the body of a record in the court of King's Bench anciently commenced: "*Memorandum quod alias, scilicet termino*," &c. and which has been literally translated in modern records, "Be it remembered that heretofore, to wit, in the term," &c. *Towns. Pl.* 486. *Bohun's Instit. Legalis.* 32. 2 *Tidd's Pr.* 719. The whole clause is now, in practice, termed, from this initial word, the *memorandum*, and its use is supposed to have originated from the circumstance that proceedings "by bill," (in which alone it has been employed) were formerly considered as the by-business of the court. *Gilb. C. Pleas*, 47, 48.

The term *memorandum* is also sometimes applied to a special clause in an instrument, to which attention is particularly required, as in a policy of insurance; and it has now become an ordinary word signifying a brief note in writing of some transaction, or an outline of an intended instrument, or an instrument drawn up in a brief and compendious form.

**MEMORANDUM.** A clause in a marine policy of insurance, declaring that certain enumerated articles, and any other articles that are perishable in their own nature, shall be free from average under a given rate, unless general, or the ship be stranded. 3 *Kent's Com.* 294, 295. 2 *Phillips on Ins.* 467. This clause was first introduced into the London policies in May, 1749. *Id.* note.

**MEMORANDUM.** A writing required by the Statute of Frauds, to bind the parties to agreements in certain specified cases. 2 *Kent's Com.* 510. It may be either all on one paper, or on several papers, if sufficiently connected, and it must contain the substance of the agreement; that is to say, the parties, the consideration, and the subject matter, as well as the promise and signature. See *Blackburn on the Contract of Sale*, c. 4.

**MEMORANDUM CHECK.** A check intended not to be presented immediately for payment; such understanding being denoted by the word *mem.* written upon it. But it has been held that the making of a check in this way does not affect its negotiability, or alter the right of the holder to present it to the bank, and de-

mand payment immediately. 11 *Paige's R.* 612.

**MEMORIA.** Lat. In old English law. Memory; faculty of remembrance; mental soundness generally. *Utrum compos sui et bonæ memoriæ, cum sano intellectu et sensu integro*; whether having power of himself, and of good memory, with sound understanding, and perfect sense. *Bract.* fol. 15 b. *Vel esse sanæ mentis, vel non bonæ memoriæ*; or to be not of sound mind, or not of good memory. *Id.* fol. 43. *Fleta*, lib. 3, c. 7, § 1.

In old records. A monument or sepulchre. *Cowell. Spelman.*

**MEMORIE.** L. Fr. [from Lat. *memoria*, q. v.] Memory; mind or understanding. *Ne fuit mie en droit memorie en temps du feffement*; was not in his right mind at the time of the feoffment. *Britt.* c. 80.

**MEMORY.** [Lat. *memoria*; L. Fr. *memorie*.] Used generally with the word *mind*, to denote full possession of the intellectual powers, as in the expression, "sound and disposing mind and memory," and the "*sanæ mentis et bonæ memoriæ*" of the ancient law. The Fr. *memorie*, however, was sometimes singly used in this comprehensive sense, as in the phrase *de non sane memorie*, (q. v.) See *Memorie*.

**MEMORY (or TIME OF MEMORY.)** In English law. A period fixed by the statute of Westminster 1, A. D. 1276, to commence from the beginning of the reign of Richard I. 2 *Chitt. Bl. Com.* 30, 31, and note. 1 *Steph. Com.* 45. See preamble to stat. 2 & 3 Will. IV. c. 71.

**MENAUNTISE.** L. Fr. A place of residence. *Britt.* c. 120.

**MENDACIUM.** Lat. [from *mendax*, lying.] In old English law. Falsehood; a falsehood or lie; a false statement made with intent to deceive; (*falsa significatio vocis, cum intentione fallendi.*) *Fleta*, lib. 5, c. 22, § 6. *Fleta* enumerates eight kinds of falsehoods. *Id. ibid.* See *Grotius de Jur. Bell.* lib. 3, c. 1, § 9.

**MENER, Meyne.** L. Fr. [from *mener*, q. v.] A leading. *Ovesque la mencee de corns et de bouche*; with the leading of horns and of mouth. *Britt.* c. 12, 27. A description of the ancient hue and cry which was led by a number of men, sounding horns and shouting.

**MENER, Mesner, Menir.** L. Fr. To lead; to conduct or manage; to bring; to drive; to carry. *Pris et mene à nostre*

*gaole*; taken and carried to our gaol. *Britt.* c. 29.

**MENETUM.** L. Lat. In old Scotch law. A stock-horn; a horn made of wood, "with circles and girds of the same." *Skene de Verb. Sign.*

**MENIAL.** A term applied to a domestic servant, as being *intra mœnia*, (within the walls.) 1 *Bl. Com.* 425.

**MENS.** Lat. Mind; understanding. *Calv. Lex. Mente captus*; of unsound mind. *Id. Fleta*, lib. 3, c. 3, § 10.

Will; meaning; intention. *Id. Mens testatoris in testamentis spectanda est.* The intention of the testator is to be regarded in wills. *Jenk. Cent.* 277. *Actus non facit reum, nisi mens sit rea*, (q. v.) See *Animus*.

**MENS LEGISLATORIS.** Lat. The intention of the law-maker. *Suarez de Leg.* lib. 6, c. 1. *Bl. L. Tr.* 3.

**MENSA.** Lat. In the civil law. A table; the table of a money-changer. *Dig.* 2. 14. 47.

**MENSA.** Lat. In old English law. A table; board. See *A mensa et thoro*.

**MENSIS.** Lat. In civil and old English law. A month. *Dig.* 50. 17. 101. *Mensis vetitus*; the prohibited month; fence-month, (q. v.)

**MENSOR.** Lat. [from *metiri*, to measure.] In the civil law. A measurer of land; a surveyor. *Dig.* 11. 6. *Id.* 50. 6. 6. *Cod.* 12. 28.

**MENSULARIUS.** Lat. [from *mensa*, a table.] In the civil law. A money-changer or dealer in money, (*nummularius*.) *Dig.* 2. 14. 47. 1.

**MENSURA.** Lat. In old English law. A measure. *Una mensura vini sit per totum regnum nostrum, et una mensura cervisiæ, et una mensura bladi*; there shall be one measure of wine throughout our whole realm, and one measure of ale, and one measure of grain. *Magna Charta*, 9 Hen. III. c. 25.

A bushel. *Cowell.*

**MENSURA DOMINI REGIS.** L. Lat. The king's measure. *Fleta*, lib. 2, c. 12, § 1. Otherwise called *mensura regalis*; the standard measure kept in the exchequer. *Cowell.* 1 *Bl. Com.* 276.

**MENTIRI.** Lat. To lie; to assert a falsehood. *Mentiri est contra mentem ire*; to lie is to go against the mind. An etymology of the civilians, adopted in some of the old reports. *Calv. Lex.* 3 *Bulstr.* 260.

MERCANDISA, *Merchandise*, *Merchandise*. L. Lat. In old English law. Merchandize; all goods and wares exposed to sale in fairs or markets. *Paroch. Antiq.* 311. *Magna Charta*, 9 Hen. III. c. 14. *Bract.* fol. 57.

MERCANTILE LAW. The law of trade; that branch of law which defines and enforces the rights and duties of merchants or mercantile persons; embracing the law of partnership, of principal and agent, of bills and notes, of sale, of bailment, guaranty, and lien, the law of shipping, of insurance, &c.

MERCAT. An old form of *market*, common in Scotch law, closely formed from the Lat. *mercatum*, (q. v.)

MERCATIO. Lat. [from *mercari*, to buy.] A buying; a trafficking or trading.

MERCATOR. Lat. [from *mercari*, to buy.] In civil and old English law. A trader; a merchant. Strictly, a buyer. It included all sorts of traders or buyers and sellers. *Cowell. Mag. Chart.* 9 Hen. III. cc. 14, 30. 2 *Show.* 325. *Bract.* fol. 334. The Lombards, in the thirteenth century, were called *mercatores* and *campsores*. 1 *Rob. Charles V.* Appendix, Note xxx. See *Merchant*.

A mercer. 2 *Show.* 326.

MERCATUM, *Mercatus*, *Mercadum*, *Marcatum*, *Marcadum*. L. Lat. [from *mercari*, to buy.] In old European law. A place of public buying and selling; a place of trade or traffic; a market; (*forum rerum venalium*, *locus publicæ mercationis*.) *Spelman.* *Marcatum*, *mercadum*, and *marcadum* are used in continental law. *Mercatum* is used by Bracton and other English writers. *Bract.* fol. 56 b, 235. *Fleta*, lib. 4, c. 28, §§ 13, 14. *Mercatus* occurs in the civil law. *Cod.* 4. 60. 1.

MERCEN-LAGE, *Merchen-lage*, *Merchen-lae*. [Sax. *Myrcnalag*; L. Lat. *Merchenelega*.] The Mercian law, or law of the Mercians. One of the three principal systems of laws which prevailed in England, in the times of the Saxons; being that which was observed in many of the midland counties, and those bordering on the principality of Wales. *Spelman.* 1 *Bl. Com.* 65.

MERCES. Lat. In the civil law. Hire or compensation; the reward of labor, whether money or other thing. *Dig.* 19. 2. 2. *Calv. Lex.*

MERCHANDIZE. [L. Lat. *merchandise*, *mercandisa*; Lat. *merx*.] Articles of

trade or traffic; subjects of commerce; things bought and sold, or bought to be sold again.\* "The term *merchandize* is usually, if not universally, limited to things that are *ordinarily* bought and sold, or are ordinarily the subjects of commerce and traffic." "The fact that a thing is *sometimes* bought and sold, is no proof that it is *merchandize*." *Story J.* 2 *Story's R.* 16, 53. "The term *merchandize* is usually applied to specific articles, having a sensible intrinsic value, bulk, weight or measure in themselves, and not merely evidences of value." *Id.* 54. On this ground, bank bills were held not to be *merchandize*. *Id.* *ibid.* See 6 *Wendell's R.* 335. On the other hand, silver dollars were held to be *merchandize*. 2 *Mason's R.* 467. In other cases, a broader meaning has been claimed for the word. 3 *Metcalf's R.* 365, 367, *Wilde, J.*

MERCHANT. [L. Fr. *marchant*; Lat. *mercator*, from *mercari*, to buy.] Strictly, a buyer; one who buys to sell, or buys and sells; a trader; one who deals in the purchase and sale of goods; a dealer in *merchandize*.

One who traffics or carries on trade with foreign countries; one who exports and imports goods, and sells them by wholesale. *Webster.* This is considered by Webster the proper sense of the word; but there is nothing in the etymology, or in the application of the equivalent words in Latin and French, which warrants such a restriction of meaning. It appears to have grown out of mercantile usage, and it is very properly said by the editor of *Cowell*, that *mercator*, the Latin equivalent, embraced all sorts of traders or buyers and sellers, and that the Scotch, in calling their pedlars *merchants*, keep the primitive use of the word. Indeed, Bracton expressly applies the term *mercator* to those itinerant chapmen for whose benefit the courts of *pepoudrous* or *piepouders* were held. *Bract.* fol. 334. In 2 *Show.* 326, it was said, "in the country, every shop-keeper is styled a *merchant*."

MERCIMONIA. Lat. In old writs. Wares. *Mercimonia et merchandizas*; wares and merchandizes. *Reg. Brev.* Appendix, 10.

MERCIMONIATUS ANGLIÆ. L. Lat. In old records. The impost of England upon *merchandize*. *Cowell.*

MERCY. L. Fr. and Eng. [L. Fr. *merci*; L. Lat. *miser cordia*.] In old

practice. The arbitrament or discretion of the king, lord or judge, in punishing any offence, not directly censured by the law. *Cowell*. To be "in mercy" seems to have originally signified, to be subject to the discretion of the king, &c. as to the amount of punishment. Hence were framed the Fr. *amercir*, and English *amerce*, and *amercement*, denoting the imposition of a pecuniary punishment in general terms. See *Amerce*, *Amercement*, *In mercy*. Occasionally, however, it was used to denote a fixed sum. *Soit en nostre mercy à cent sous*; shall be in our mercy at a hundred shillings. *Britt.* c. 22, fol. 59.

MERE. Sax. A marsh. *Spelman*.

MERE. L. Fr. Mother. *Aele*, mere, *fille*; grandmother, mother, daughter. *Britt.* c. 89, fol. 180 b.

MERE RIGHT. [L. Lat. *merum jus*; L. Fr. *meer droit*.] The mere right of property in land; the *jus proprietatis*, without either possession or even the right of possession. 2 *Bl. Com.* 197. The abstract right of property.

MERE-STONE. In old English law. A stone for bounding or dividing lands. *Yearb.* P. 18 Hen. VI. 5.

MEREMIUM. L. Lat. [from L. Fr. *meresme*, *mereme*.] In old English and Scotch law. Timber. *Ad buscam*, meremium, *corticem vel carbonem emendum*; to buy brush-wood, timber, bark or coal. *Cart. de For.* c. 14. *Skene de Verb. Sign.* See *Mæremium*.

MERENNIUM, *Merennum*. L. Lat. In old records. Timber. *Cowell*. A corruption of *meremium*, (q. v.)

MERGER. [from Fr. *merger*, to drown, from Lat. *mergere*, to plunge.] The drowning, sinking, absorption or extinguishment of one estate in another.\* The extinguishment by act of law, of one estate in another, by the union of the two estates. *Preston on Merger*, 7. The consolidation of a greater estate with a less.\* "It is a general principle of law, that where a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or, in the law phrase, is said to be *merged*, that is, sunk or drowned in the greater. Thus, if there be tenant for years, and the reversion in fee simple descends to, or is purchased by him, the term of years is *merged* in the inheritance, and shall never exist any more." 2 *Bl. Com.* 177. 1 *Steph. Com.* 293. 4 *Kent's Com.* 99. 2 *Crabb's Real Prop.* 1057, § 2447.

*Lee on Abstracts*, 255. So, a term for years may *merge* in another term that is immediately reversionary to, or expectant upon it. *Id. ibid.* 4 *Kent's Com.* 99.

The absorption or extinguishment of one contract in another. Where an engagement has been made by way of simple contract, and afterwards the same engagement is entered into between the same parties by deed, the simple contract is *merged* in the deed, and becomes totally extinguished.\* *Smith on Contracts*, 18. 2 *Penn. R.* 533. 1 *Watts & Serg. R.* 83.

MERIDIES. L. Lat. In old English law. Noon. *Fleta*, lib. 5, c. 5, § 31.

MERISME, *Mærisme*. L. Fr. Timber. *Yearb.* H. 9 Edw. III. 4. *Kelham*.

MERESME, *Mereme*. L. Fr. Timber. *Yearb.* H. 9 Edw. III. 4. P. 7 Hen. VI. 47.

MERITS. In practice. Matter of substance in law, as distinguished from matter of mere form; a substantial ground of defence in law. A defendant is said "to swear to *merits*," or "to make affidavit of *merits*," when he makes affidavit that he has a good and sufficient or substantial defence to the action on the merits. 3 *Chitt. Gen. Pr.* 543, 544. *Merits*, in this application of it, has the technical sense of merits *in law*, and is not confined to a strictly moral and conscientious defence. *Id.* 545. 1 *Burr. Pr.* 214.

MERS. In old English law. Marshy ground. *Spelman*.

MERTON, *Statute of*. A celebrated English statute, passed in the 20th year of the reign of Henry III. A. D. 1253. So called, because the parliament was then holden at the monastery or priory of the canons regular of Merton, in Surrey, seven miles distant from the city of London. 2 *Inst.* 79. *Barringt. Obs. Stat.* 46. Mr. Barrington observes that it seems to be only an ordinance. *Id. Hale's Hist. Com. Law*, 9, 10, note, (Runnington's ed. 1820.) It is the first of those old statutes which Sir Matthew Hale describes as not being of record, but only their memorials preserved in ancient printed and MS. books of statutes. *Id.* 18. Bracton calls it the *Constitutio de Merton*. *Bract.* fol. 227.

MERUM. Lat. In old English law. Mere; naked or abstract. *Merum jus*; mere right. *Bract.* fol. 31. *Majus jus merum*; more mere right. *Id. ibid.* See *Mere right*.

MERUM IMPERIUM. Lat. In the civil law. The simple power of punish-

ment. *Hallifax, Anal.* b. 3, c. 8, num. 5.

**MERN.** Lat. Merchandize; moveable articles that are bought and sold; articles of trade. See *infra*.

**MERX** est quicquid vendi potest. Merchandize is whatever can be sold. Every personal thing for which merchants traffic may be called merchandize. *Com.* 355. 3 *Wooddes, Lect.* 263. *Wilde, J.* 3 *Metcalfe's R.* 365, 367. The broad terms of this maxim are qualified by the following.

**Mercis appellatio ad res mobiles tantum pertinet.** The term merchandize belongs to moveable things only. *Dig.* 50. 16. 66.

**Mercis appellatione homines non contineri.** Men are not included under the denomination of merchandize. *Dig.* 50. 16. 207. Man is never comprehended under the name of merchandize. *Emer. Tr. des Ass.* ch. 8, sect. 4.

**MERYM,** *Merime, Merisme, Maerisme, Merrien, Merin.* L. Fr. Timber. *Kelham.*

**MES, Meas, Mas.** L. Fr. But. *Britt. passim. Litt. passim. Kelham. Mes vide;* but see. *T. Raym.* 11. *Mes adjornat;* but it is adjourned. *Id.* 201, 208.

**MESQUE.** L. Fr. Except; unless. *Fet Assaver,* § 23.

**MES.** tof. mo. co. gar. ter. pra. pas. bos. brue. mora, Juncu. maris. alne. rus. re. sectare priora.

A rhyming couplet artificially constructed by the old practitioners in real actions, for the more easy remembrance of the rule requiring the various parcels of land which might be demanded in a writ of right, to be named in a certain order. It consists of the first syllables of the following words: *Messuagium, toftum, molendinum, columbare, gardinum, terra, pratum, pastura, boscus, bruera mora, Juncaria, mariscus, alnetum, ruscaria, reditus;* (in English, messuage, toft, mill, dovehouse, garden, land, meadow, pasture, wood, heath, moor, rush-ground, marsh, alder-ground, broom-ground, rent;) the words *sectare priora* (follow the first syllables) denoting how it was to be read. *F. N. B.* 2 C. In the Register, the complementary syllables are written over each of the abbreviations. *Reg. Orig.* 2.

**MESAVENTURE.** L. Fr. A mischance. Defined by Britton to be, where persons die by falling from trees, ships, carts, horses, mills, &c. *Britt.* c. 7, fol. 6, 15 b. See *Misadventure*.

**MISCREAUNTES.** L. Fr. In old English law. Apostates; unbelievers; in-

fidels. Classified by Britton with the worst criminals; as murderers, robbers, prison-breakers, sorcerers, poisoners, &c. *Britt.* c. 29. Hence the term *miscreant*. 4 *Bl. Com.* 44. Otherwise written *mescroyantz*. *Id. ibid.* note.

**MESCRU.** L. Fr. Suspected of crime; guilty. *Britt.* c. 1, 4.

**MESE, Mees, Meas.** L. Fr. In old English law. A house. *Litt.* sect. 69, 71, 701. Derived by Spelman, with the L. Lat. *messuagium*, from the O. Lat. *massa*, another form of *mansa* or *mansus*. *Spelman, voc. Mansus*.

**MESFAIT.** L. Fr. A misdeed; an offence. *Britt.* c. 29, fol. 71 b.

**MESFESOUR.** L. Fr. A wrong-doer; an offender; a criminal. *Britt.* c. 15, 22, 29.

**MESME.** L. Fr. The same. Frequently contracted to *m.* *Reg. Orig.* 17, nota.

**MESNALTY, Mesnality.** In old English law. The estate or right of a *mesne*, (q. v.) *Termes de la Ley*.

**MESNE.** L. Fr. and Eng. [Lat. *medius*.] Middle; intermediate; between two persons or proceedings. See *Medius* and *infra*.

An intermediate lord; a lord who stood between a tenant and the chief lord; a lord who was also a tenant. "Lord, *mesne*, and tenant; the tenant holdeth by four pence, and the *mesne* by twelve pence." *Co. Litt.* 23 a.

**MESNE LORD.** In old English law. A middle or intermediate lord; a lord who held of a superior lord. 2 *Bl. Com.* 59. More commonly termed a *mesne*, (q. v.)

**MESNE PROCESS.** In practice. Intermediate process; process intervening between the beginning and end of a suit. 3 *Bl. Com.* 279. Process not only for the plaintiff against the defendant, but for either of them against any other whose presence in the court may be necessary for them; as against juries, witnesses, or to execute judgments given. *Finch's Law*, b. 4, ch. 43.

The writ of *capias ad respondendum*. Called *mesne*, to distinguish it on the one hand, from the original process by which a suit was formerly commenced; and on the other, from the final process of execution. 3 *Bl. Com.* 279.

**MESNE PROFITS.** [L. Lat. *media proficua*.] In practice. Intermediate profits; profits which have been accruing between two given periods. *Holthouse*. Profits of land, which a tenant has received

during the period of his wrongful possession; and which, after a recovery in ejectment, may be recovered by an action of trespass. 3 *Bl. Com.* 205. In New-York, a proceeding by suggestion has been substituted for an action. 2 *Rev. St.* [310,] 236, § 44.

MESNER. L. Fr. To lead; to conduct or manage. *Kelham.* See *Mener.*

MESPREDRE. L. Fr. To misbehave; to do amiss; to offend. *Kelham.*

To mistake. *Id.* This is the literal meaning.

MESPRISION. L. Fr. [from *mesprendre*, q. v.] Mistake; a mistaking. *Par mesprision de nosmes nomables*; by mistake of names that should be named. *Britt.* c. 48, fol. 123 b.

MESS BRIEF. Germ. In Danish sea law. One of a ship's papers; a certificate of admeasurement granted at the home port of a vessel, by the government or by some other competent authority. *Jacobson's Sea Laws*, 51.

MESSIS. Lat. A harvest or crop. *Messis sementem sequitur.* The crop belongs to [follows] the sower. A maxim in Scotch law. Where a person is in possession of land which he has reason to believe is his own, and sows that land, he will have a right to the crops, although before it is cut down, it should be discovered that another has a preferable title to the land. *Bell's Dict.*

MESSOINGES. L. Fr. Lies. *Kelham.*

MESSOR. Lat. In old English law. A reaper. *Fleta*, lib. 2, c. 73, § 4. See *Id.* c. 84.

MESSUAGE. [L. Lat. *messuagium*, *messuagium*; L. Fr. *mease*, *meason*.] A dwelling-house, with some adjacent land assigned to the use thereof. *Cowell. Spelman.*—A dwelling-house with the adjacent buildings, including garden, orchard and curtilage.\* *Co. Litt.* 5 b, 6. *Burton's Real Prop.* 175, pl. 546. Held, in some of the old cases, to be a word of larger import than *house*; the latter word comprehending buildings only. *Keilw.* 57. But this is now overruled in England. 2 *Term R.* 498. 1 *Crabb's Real Prop.* 74, § 89. And see *Cro. Jac.* 634. Which is merely restoring the ancient interpretation of the word; it having been held, as far back as the Year Books, that there was no difference between a house and a messuage. *Fairfax, J. M.* 21 *Edw.* IV. 62. *Thel. Dig.* lib. 8, c. 1, ¶ 6. See *acc.* 4 *Penn.*

*St. (Barr's) R.* 93. 2 *Hilliard's Real Prop.* 338. See *House, Messuagium.*

This word, which is still of constant occurrence in conveyances and wills, is derived by Spelman from the L. Lat. or Ital. *massa*, (q. v.) or old Fr. *mas*, answering to the L. Fr. *mese*, (q. v.)

MESSUAGIUM, *Mesuagium*. L. Lat. A messuage. *Reg. Orig.* 1. *Cro. Jac.* 634. *Messuagium sive domus*, (a messuage or house,) are one and the same. *Id. ibid.* This identity of signification is confirmed by the use of *mesuagium* in the Magna Charta of 9 Hen. III. as the synonyme of *domus*, in the charter of King John, c. 7.

MESTER, *Mestre*, *Meister*. L. Fr. Need; occasion. *Si mester soit*; if need be. *Britt.* c. 1. *Il n'est pas mestre*; there is no need. *Yearb.* P. 6 *Edw.* III. 5.

MESTIER. L. Fr. Business; occupation. *Un coroner que face le mestier de la corone*; a coroner who shall attend to the affairs of the crown. *Britt.* fol. 2.

MESURE. L. Fr. Measure. *Britt.* c. 30.

META. Lat. The goal of a Roman race-course; a mark or object about which the chariots turned, and where the course ended.

In old English law. A boundary line; a border or terminus. Properly, a visible object, standing upon the line, as a stone or tree, and showing where it ended; a butt. See *Butts and bounds*. *Bundæ et metæ, et rationabiles divisæ quæ ponuntur in terminis et finibus agrorum, ad distinguendum prædia et dominia vicinorum*; bounds and metes and reasonable divisions which are set on the borders and limits of lands, in order to distinguish the estates and properties of neighbors. *Bract.* fol. 166 b, 167. *Fleta*, lib. 2, c. 41, § 30. *Pro metis et terminis ponendis. Mag. Rot.* 3 Hen. III. rot. 14 b.

METALLUM. Lat. In the Roman law. Metal; a mine.

Labor in mines, as a punishment for crime. *Dig.* 40. 5. 24. 5. *Calv. Lex.*

METATUS. L. Lat. In old European law. A dwelling; a seat; a station; quarters; the place where one lives or stays. *Spelman.*

METES. See *Abutalls*.

METES AND BOUNDS. [L. Lat. *metæ et bundæ, metæ et termini*.] In conveyancing. The boundary lines of lands, with their terminating points or angles;

terminal lines, with their distinctive objects; end lines and side lines. Called, in old Scotch law, *meths and marches*. *Skene in Reg. Maj.* lib. i. c. 10. See *Butts and bounds*.

METHOD, in patent law, construed. *Boulton & Watt v. Bull*, 2 *H. Bl.* 463.

ΜΗΤΡΑΔΕΛΦΟΣ, Μητρὰδέλφος. Gr. [from *μήτηρ*, mother, and *ἀδελφός*, brother.] In the civil law. A maternal uncle, (*avunculus*;) a mother's brother. *Inst.* 3. 6. 1.

ΜΗΤΡΑΔΕΛΦΗ, Μητρὰδέλφη. Gr. [from *μήτηρ*, mother, and *ἀδελφή*, sister.] In the civil law. A maternal aunt, (*matertera*;) a mother's sister. *Inst.* 3. 6. 1.

METROPOLIS. Græco-Lat. and Eng. [Gr. *μητρόπολις*, from *μήτηρ*, mother, and *πόλις*, city.] A mother city; one from which a colony was sent out. *Calv. Lex.*

The capital of a province. *Id.*

METROPOLITAN. In English law. One of the titles of an archbishop. Derived from the circumstance that archbishops were consecrated at first in the metropolis of a province. 4 *Inst.* 94.

METTRE. L. Fr. [from Lat. *mittere*, q. v.] To put; to place or set; to fix. *Mettre en escript*; to put in writing. *Britt.* fol. 1. *Se pusse mettre en jure*; may put himself on a jury. *Id.* c. 68. *Si il se mette en pays*; if he put himself on the country. *Id.* c. 15.

To put (a case;) to suppose. *Mettons*; put, suppose. *Yearb. M.* 3 Hen. VI. pl. 16. *Mettomus*; let us suppose or admit. *Dycr.* 86. See *Mitter*.

METUS. Lat. In the civil law. Fear. By this was meant not every kind of apprehension (*non quemlibet timorem*;) but the fear of some serious evil (*majoris malitatis*.) *Dig.* 4. 2. 5. It was not the fear of a foolish man (*non vani hominis*;) but a reasonable apprehension that might be felt by a man of the greatest coolness, (*sed qui merito et in homine constantissimo cadat*.) *Id.* 4. 2. 6.

METUS. Lat. In old English law. Fear; apprehension of danger, present or expected, (*præsentis vel futuri periculi causa*;) not the fear of a foolish and timorous person, but such as may influence a steady man, (*talem qui cadere possit in virum constantem*;) such a state of apprehension, as may include peril of death and bodily suffering; (*talis enim debet esse metus qui in se contineat mortis periculum et corporis cruciatum*.) *Bract.* fol. 16 b. *Fleta*, lib. 3, c. 7, § 1. 1 *Bl. Com.* 131.

MEU. L. Fr. Moved; commenced, as a suit. *Kelham. Britt.* c. 126.

MEULX, *Meux, Meuz, Meutz, Meultz*. L. Fr. Better. *Kelham.*

MEUM. Lat. Mine. *Dig.* 50. 16. 91.

MEYN, *Mayn*. L. Fr. Hand. *De meyn en meyn*; from hand to hand. *Kelham.*

An oath. *A sa soule meyn*; on his own single oath. *Id.*

Mean, intermediate. *En le meyn temps. Id.*

MEYNOVERE. L. Fr. The same with *mainour*, (q. v.)

MEYNOVERER. L. Fr. To occupy; to manure, (q. v.) *Britt.* c. 40, fol. 104.

MEYNPAST. L. Fr. A household or family. *Britt.* c. 1. See *Manupastus*.

MEYNERNOUR. L. Fr. A mainpernor. *Britt.* c. 1, 21.

MEYNS. L. Fr. [from Lat. *minus*.] Less; insufficiently; not. *Meyns avysement maunde*; ill advisedly sent. *Kelham. Meyns sachantz*; illiterate. *Id. Au meyns*; at least. *Id.*

MEYS. L. Fr. A month. *Kelham.*

MI, *My*. L. Fr. [from Lat. *medius*.] Half; middle. *Kelham. L. Fr. Dict.*

MI'A. A contraction of *misericordia*. *Comb.* 352. 1 *Inst. Cler.* 11.

MICHAELMAS TERM. One of the four terms of the English courts of common law, beginning on the second day of November and ending on the twenty-fifth. 3 *Steph. Com.* 562.

MICHEL-GEMOT. Sax. Great meeting. One of the names of the general council of the kingdom in the times of the Saxons. 1 *Bl. Com.* 147.

MICHEL-SYNOTH. Sax. Great council. One of the names of the general council of the kingdom in the times of the Saxons. 1 *Bl. Com.* 147.

MIDDLE THREAD. [L. Lat. *medium filum*; L. Fr. *fil de myleu*.] An imaginary line drawn through the middle of a stream in the direction of its length.\* *Story, J.* 3 *Sumner's R.* 170, 178.

MIE. L. Fr. Not; ill. *Kelham.*

Middle. *Id.* See *Mi*.

MIELZ, *Mieltz, Miez, Miex*. L. Fr. Best; better. *Kelham.*

MIENDRE. L. Fr. Less; least. *Kelham.*

MIERE, *Mier, Mire*. L. Fr. Mother. Old forms of *mere*. *Kelham.*

MIESES. Span. [from Lat. *messis*?] In Spanish law. Crops of grain. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

**MIGRARE.** Lat. To remove from one place to another; to migrate or emigrate. *Migrans jura amittat ac privilegia et immunitates domicilii prioris*; one who emigrates will lose the rights, privileges and immunities of his former domicil. *Voet, Com. ad Pand. tom. i. 347. 1 Kent's Com. 76.*

**MILES.** Lat. In the civil law. A soldier. Derived by Ulpian either from *militia*, (hardship,) or from *multitudo*, or from *malum*, (evil, which they often avert,) or from *mille*, (a thousand.) *Dig. 29. 1. 1.*

**MILES.** L. Lat. In old English law. Knight; a knight; (Lat. a soldier.) So called, because the knights (*milites*,) formed a part of the royal army, in virtue of their feudal tenures. *1 Bl. Com. 404. See Id. 272. A knight bachelor. 1 Salk. 6, pl. 14. See Milites.*

**MILIARE.** L. Lat. In old English law. A thousand. *Fleta, lib. 2, c. 12, § 2.*

**MILITARY CAUSES.** In English law. Causes of action or injuries cognizable in the court military, or court of chivalry. *3 Bl. Com. 103.*

**MILITARY COURTS,** in English law, include the ancient *court of chivalry* and modern *courts martial*, (qq. v.) *3 Bl. Com. 68, 103.*

**MILITARY FEUDS, (FIEFS or FEES.)** In old English law. The genuine or original feuds or feudal estates, which were all of a military nature, and in the hands of military persons, being held by the tenure of military service.\* *2 Bl. Com. 57.*

**MILITARY LANDS.** In American law. Lands granted to soldiers for military services. *United States Digest, Military and Bounty Lands.*

**MILITARY LAW.** A system of regulations for the government of an army.\* A system of regulations for the government of the armies in the service of the United States, authorized by the Act of Congress of April 10th, 1806, and known as the Articles of War. *1 Kent's Com. 341, note.* It is quite a distinct thing from martial law. *Id. ibid.*

**MILITARY TENURES.** In English law. The ancient tenures by knight service and escuage, which were abolished by the statute 12 Car. II. c. 24. *2 Bl. Com. 77.*

**MILITES.** L. Lat. [plur. of *miles*, knight.] In old English law. Knights.

*Cum militibus comitatum*; with the knights of the shires. *Mag. Cart. 9 Hen. III. c. 12. Cum quatuor militibus cujuslibet comitatús*; with four knights of every shire. *Mag. Cart. Johan. c. 18.*

In old Scotch law. Freeholders. *Skene de Verb. Sign.*

**MILITIA.** Lat. and Eng. [from *miles*, a soldier.] Military service. The national soldiery of a country, as distinguished from the standing military force; consisting of the able-bodied male inhabitants of a prescribed age, who are enrolled, officered, mustered and trained according to law, but are called into active service only on emergent occasions, such as insurrection or invasion, for the public defence. *Act of Congress, May 8, 1792. United States Digest, Militia. 1 Kent's Com. 262, 266.*

"MILL," is a tenement. *Burr. Sett. Cas. 107, 108.*

"MILL," held to mean not merely the building in which the business is carried on, but the site, dam, and other things connected with the freehold. *Story, J. 3 Mason's R. 280.* The grant of a saw-mill or grist-mill, with its privileges and appurtenances, will pass the land under it, and that required for the use of the mill; also the head of water necessary to its enjoyment, and the right of flowing back upon other lands of the grantor. *3 Shepl. R. 218. 5 Id. 281.* So, in the case of a devise of a mill and the appurtenances. *3 Mason's R. 280. 1 Serg. & Rawle's R. 169. See Angell on Water-Courses, §§ 153—157.*

"MILL SITE." The grant of a mill site passes all the land covered by the mill. *2 Appl. 61.* The exception in a lease, of a mill site, includes not merely an easement, but the soil of the mill site, and all the land necessary for the pond and for carrying on the mill. *6 Cowen's R. 677. See Ang. on Water-Courses, § 153 a.*

**MILLENA.** L. Lat. [from Lat. *mille*, a thousand.] In old English practice. A thousand. *Towns. Pl. 171.*

**MILNE.** An old form of mill; as millner was of miller. *Plymouth Col. Laws, 1636, 1638.* It appears to be immediately derived from the Fr. *molin*, (q. v.)

**MINA.** L. Lat. In old English law. A measure of corn or grain. *Cowell. Spelman.*

**MINARE.** L. Lat. In old records. To mine or dig mines. *Cowell. Minator; a miner. Id.*

To drive. *Spelman. Minator caruæ*; a plough-driver. *Cowell.*

**MIND AND MEMORY.** A phrase applied to testators, denoting the possession of mental capacity to make a will. In order to make a valid will, the testator must have a sound and disposing *mind and memory*. In other words, he ought to be capable of making his will, with an understanding of the nature of the business in which he is engaged,—a recollection of the property he means to dispose of,—of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them. *Washington, J. 3 Wash. C. C. R. 385, 386.*

"MINE," held to have the sense of quarry. *14 Mees. & W. 859, 872, Parke, B. quoting Jacob.*

**MINERA.** L. Lat. In old English law. A mine. *Co. Litt. 6 a. Fleta, lib. 2, c. 41, § 8. 4 Mod. 143.*

"MINERALS," held to include all fossil bodies or matters dug out of mines. *14 Mees. & W. 859.* Such as beds of stone which may be dug by winning or quarrying. *Id. ibid. Parke, B.*

**MINIME.** Lat. In the least degree; least of all; by no means; not at all. *Minime mutanda sunt quæ certam habuerunt interpretationem.* Things which have had a certain interpretation, [whose interpretation has been settled, as by common opinion,] are not to be altered. *Co. Litt. 365. Wingate's Max. 748, max. 202.*

**MINIMENT.** An old form of *muni-ment*, (q. v.) *Blount.*

**MINIMUS, Minimum.** Lat. The least; the smallest. *Minima pœna corporalis est major qualibet pecuniaria.* The smallest corporal punishment is greater than any pecuniary one. *2 Inst. 220.*

*Minimum est nihilo proximum.* The least is the nearest to nothing. *Bacon's Arg. Low's case of Tenures.*

**MINISTER.** Lat. and Eng. [L. Fr. *ministre.*] An assistant; an attendant.\* A servant. *Hob. 125.* One who executes the orders of another.\* A chief servant; an agent. *Webster.*

An officer of justice, charged with the execution of the law, and hence termed a ministerial officer; such as a sheriff, bailiff, coroner, sheriff's officer. *Britt. c. 21.* The Roman prætor's attendants were called *ministri*. *Adam's Rom. Ant. 133.* In the old books, the term is applied to all officers assisting in the administration of justice,

such as clerks, serjeants, attorneys, &c. and even to the justices themselves. *Britt. ub. sup. Stat. Westm. 1, c. 25. 2 Inst. 208.*

In Saxon law. A thane. *Spelman.*

In international law. A diplomatic agent or representative; as a minister plenipotentiary, a resident minister. *Wheaton's Intern. Law, 264, [273.] 1 Kent's Com. 39, 40.*

**MINISTERIAL.** [from *minister*, q. v.] Attendant upon; subservient, subordinate. "Those magistrates who have a certain *imperium*, but without jurisdiction, are called *ministerial officers*." *Hale's Anal. sect. xii.*

**MINISTERIUM.** Lat. [from *minister*, q. v.] Ministry; attendance; service; office. *Calv. Lex. Spelman.*

**MINOR.** Lat. Less; younger. See *Minus.*

**MINOR.** Lat. and Eng. A minor, or infant. A term derived from the civil law, which described a person under a certain age, as *less than* so many years. *Minor viginti quinque annis*; one less than twenty-five years of age. *Inst. 1. 14. 2.* The correlative term was *major*, (as *major viginti quinque annis*,) but this has not been adopted in English. Bracton and Fleta use the word *minor* alone, in its modern sense of *infant*. *Bract. fol. 340 b. Fleta, lib. 2, c. 60, § 26.*

**Minor jurare non potest.** A minor cannot make oath. *Co. Litt. 172 b.* An infant cannot be sworn on a jury. *Litt. sect. 259.* A maxim of practice, taken even anciently in a qualified sense. *Co. Litt. ub. sup.* It seems to be derived from the rule of the civil law, *Pupillo non deferitur jusjurandum. Dig. 12. 2. 34. 2.*

**Minor 17 annis non admittitur fore executorem.** A person under seventeen years is not admitted to be an executor. *6 Co. 67, Sir Moyle Finch's case.* A rule of ecclesiastical law. See *Age.*

**Minor minorem custodire non debet, alios enim præsumitur male regere qui seipsum regere nescit.** A minor ought not to be guardian to a minor, for he who knows not how to govern himself, is presumed to be unfit to govern others. *Co. Litt. 88 b.*

**MINOR.** Lat. In old English law. A person of lower condition. *Fleta, lib. 2, c. 47, §§ 13, 15.*

**MINOR ÆTAS.** Lat. In old English law. Minority or infancy. *Cro. Car. 516.* Literally, lesser age.

**MINOR FACT.** In the law of evi-

dence. A relative, collateral or subordinate fact; a circumstance. *Wills, Circ. Evid.* 27. *Burr. Circ. Evid.* 121, note, 582.

**MINORA REGALIA.** L. Lat. In English law. The lesser prerogatives of the crown, including the rights of the revenue. 1 *Bl. Com.* 241.

**MINORITY.** [Lat. *minor ætas*, contracted into *minoritas*.] The state of being under, or less than a certain age; in the civil law, under twenty-five, (*minor viginti quinque annis*;) in the common law, under twenty-one. See *Infancy, Minor*.

**MINUERE.** Lat. [from *minus*, less.] In the civil law. To make less; to diminish or reduce. *Dig.* 4. 5. 2. 2.

**MINUM.** L. Lat. A technical word used in old practice, when the records were written in Latin, descriptive of the marks or strokes composing the letters *i, m, n*, and *u*, and obviously made up from those letters. If a word ended with *um*, it was said to have five *minums* at the end. 1 *Inst. Cler.* 15.

**MINUS.** Lat. Less. In many phrases of the civil law, this word had the sense of *not*. Thus, a debt was said to be *minus solutum*, though none of it had been paid. *Minus solutum intelligitur etiam si nihil esset solutum.* *Dig.* 50. 16. 32. So, if paid at a later time than was agreed on. *Minus solvit qui tardius solvit.* *Dig.* 50. 16. 12. 1. So, in some common law phrases. *Minus satis*; insufficient. *Cro. Jac.* 552. *Minus sufficiens in literatura*; incompetent in point of learning. 1 *Bl. Com.* 390. 4 *Mod.* 134.

*In eo quod plus sit, semper inest et minus.* In the greater is always included the less also. *Dig.* 50. 17. 110.

**MINUTE.** L. Fr. [from *mi*, middle, and *nuyt*, night.] Midnight. *Britt.* c. 80.

**MINUTE TITHES.** [L. Lat. *minutæ*, or *minores decimæ*.] In old English law. Small tithes, such as usually belong to the vicar; as herbs, seeds, eggs, honey, wax, &c. *Cowell.* 2 *Inst.* 649.

**MINUTES.** In Scotch practice. A pleading put into writing before the Lord Ordinary, as the ground of his judgment. *Bell's Dict.*

**MINUTIO.** Lat. [from *minuere*, q. v.] In the civil law. A lessening; diminution or reduction. *Dig.* 4. 5. 1.

**MINUTUS.** L. Lat. In old English law. Small. *Minutis curiis*; in small courts. *Fleta*, lib. 2, c. 61, § 20.

**MIRROR OF JUSTICES**, commonly called **THE MIRROR**. The title of an old treatise written in law French, and generally attributed to Andrew Horne, who was chamberlain of London in the time of Edw. II. though the share which Horne had in the work has been a matter of dispute. Lord Coke supposes that the greater part of it was written before the Conquest, and that Horne added many things to it in the reign of Edward I. 9 *Co. pref.* 10 *Id. pref.* Dugdale supposes that Horne composed the work from an old law tract called *Speculum Justitiariorum.* *Dugd. Orig. Jur.* 23. Mr. Reeves is of the opinion that a great part of it was written after Fleta and Britton. 2 *Reeves' Hist.* 358. It was first published in 1642. *Crabb's Hist.* 224, 225. Mr. Barrington remarks that the word *mirror*, (Lat. *speculum*; Germ. *spiegel*;) is used as the title of some of the oldest law books. *Obs. Stat.* 1, 2, note [b.]

**MIS'**. An abbreviation of *mis*. 1 *Inst. Cler.* 11.

**MISA.** L. Lat. In old English law. The mise or issue in a writ of right. *Spelman.* See *Mise*.

In old records. A compact or agreement; a form of compromise. *Cowell.*

**MISÆ.** L. Lat. [from L. Fr. *mise*, q. v.] In old practice. Costs of suit; charges. *Spelman.* *T. Raym.* 20. *Cum misis et custibus.* *Fleta*, lib. 2, c. 64, § 13. *Pro misis et custagiis.* *Dyer*, 75, (Fr. ed.) Kitchin and West are referred to in *Cowell*, as using the singular *misa*, but this was rare.

Expenses generally. *Fleta*, lib. 2, c. 82, § 2.

**MISADVENTURE.** [L. Fr. *mesaventure*; L. Lat. *infortunium*.] In criminal law. Mischance; misfortune or accident. See *Mesaventure*. This term is differently defined by Britton, Staundford and West. *Britt.* c. 7. *Staundf. Pl. Cor.* lib. 1, c. 8. *West's Symbol.* part. 2, tit. Indictment, sect. 48—50. *Cowell.*

**MISCONTINUANCE.** In practice. An improper continuance; want of proper form in a continuance. *Cowell* makes it to be the same with *discontinuance*.

**MISCREANT.** In old English law. An apostate; an unbeliever; one who totally renounced Christianity. 4 *Bl. Com.* 44.

**MISDEMEAN.** In old English law. To use improperly; to abuse. "If he

*misdeemean* an authority." *Finch's Law*, b. 1, ch. 3, num. 63.

**MISDEMEANOUR**, *Misdemesnor*. In criminal law. A less heinous species of crime; an indictable offence, not amounting to felony. 4 *Chitt. Bl. Com.* 5, and note.

According to Blackstone, crime and misdeemeanour, properly speaking, are mere synonymous terms. 4 *Bl. Com. ub. sup.* 4 *Steph. Com.* 57.

**MISE**. L. Fr. Cost or expense. *Cowell*. But it is most commonly used in the plural, (*mises*,) like the L. Lat. *misæ*. *Britt.* c. 17. *Kelham*.

**MISE**. L. Fr. and Eng. [L. Lat. *missum*.] In old English practice. The issue in real actions, particularly in writs of right. So called, because both parties *put* themselves upon the mere right, and the whole cause was *put* [*missa*] upon this point. *Co. Litt.* 294 b. Lord Coke seems to consider this word to be derived from the Lat. *mittere*, to put. But it appears to be essentially French, from *mettre*, to put. *Crabb's Hist.* 422. *Et il joyne le mise sur le mere droit*; and he join the mise upon the mere right. *Litt.* sect. 478. *Le mise est joyne en le bank*. *Id.* sect. 514. The word is still used in practice, in some of the United States. 10 *Grattan's R.* 350.

**MISE-MONEY**. In old records. Money given by way of contract or composition to purchase any liberty, &c. *Cowell*. *Blount*.

*Misera est servitus, ubi jus est vagum aut incertum* [*incognitum*.] It is a wretched state of slavery, where the law is shifting or uncertain, [unknown.] 4 *Inst.* 246. It is one of the genuine marks of servitude, to have the law, which is our rule of action, either concealed or precarious. 1 *Bl. Com.* 416. Obedience to law becomes a hardship, when the law is unsettled or doubtful. *Broom's Max.* 62.

**MISERABLE DEPOSITUM**. Lat. In the civil law. A sad or lamentable deposit; one made under circumstances of sorrow or misfortune, such as insurrection, fire, shipwreck, &c. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 15, § 812. *Loccen. de Jur. Mar.* lib. 1, c. 7, sect. 13.

**MISERERE**. Lat. Have mercy. The first word (in the Latin version) of the fifty-first psalm, from which the whole psalm was called the *Miserere*, or psalm of mercy. It was the first verse of this that the ordinary commonly gave to such malefactors to read, as had the

benefit of clergy allowed them by law. *Cowell*.

**MISERICORDIA**. L. Lat. In old practice. Mercy. See *In misericordia, Mercy*.

An amercement. The old writ *De moderata misericordia* lay where a man had been outrageously amerced, to moderate or mitigate it. *F. N. B.* 75. *Si incidit in misericordiam; et nulla prædictarum misericordiarum ponatur, nisi per sacramentum proborum et legalium hominum de visneto*; if he fall into mercy; and none of the aforesaid amercements shall be imposed unless by the oath of good and lawful men of the visne. *Mag. Cart.* 9 Hen. III. c. 14. *Id. Johan.* c. 20.

**MISES**, *Myses*. L. Fr. Expenses or costs. 2 *Inst.* 528. *Sauve al trovour ses mises, et ses costages renables*; saving to the finder his expenses and his reasonable costs. *Britt.* c. 17.

Tasks; taxes; talliages or takings. *Stat. Confirm. Chart.* c. 5. 2 *Inst.* 528.

**MISFEASANCE**. [L. Fr. *mesfaisance*.] A misdeed or trespass. *Cro. Car.* 498. *Cowell*.

The doing what a party ought to do, improperly. 1 *Tidd's Pr.* 4. The improper performance of some act which a man may lawfully do. 3 *Steph. Com.* 460.

**MISHERSING**. In old English law. The being quit of amercements for plaints in any courts, not regularly or properly preferred. *Spelman*.

**MISJOINDER**. In practice. Improper joinder or union. Used to denote the improper union of parties as plaintiffs or defendants in an action, and the improper union of causes of action in one suit. 1 *Chitt. Pl.* 13, 44, 66, 86, 205.

**MISKENNING**. In Saxon and old English law. An unjust or irregular summoning to court; to speak unsteadily in court; to vary in one's plea. *Cowell*. *Blount*. *Spelman*.

**MISLIER**, *Mistlyer*. L. Fr. To choose the wrong; to mistake. *Kelham*. *L. Fr. Dict.*

**MISNOMER**. [from Fr. *mes*, amiss, and *nomer*, to name.] The using one name for another; a misnaming. The misnomer of a defendant is ground for pleading in abatement. 1 *Chitt. Pl.* 248, 451. In England, this is no longer allowed in personal actions. *Id. ibid.* *Stat.* 3 & 4 *Will.* IV. c. 42, § 11. As to the effect of misnomer in a deed, see *Shep. Touch.* (by Preston,)

233, 245, 373. As to the effect of misnomer in a will, see *Id.* 416. 1 *Jarman on Wills*, 330, (328, Perkins' ed. note.)

**MISPLEADING.** Error in pleading; informal pleading, as pleading *not guilty* to an action of debt, instead of *nil debet*. 1 *Salk.* 365. 2 *Tidd's Pr.* 924. 1 *Chitt. Pl.* 682.

**MISPRISION.** [L. Fr. *mesprision*, q. v.] In old practice. Neglect; oversight; mistake; as the misprision of a clerk in writing or keeping a record. *Stat.* 14 *Edw.* III. c. 6, st. 1. *Stat.* 8 *Hen.* VI. c. 15. *Crompt. Jur.* fol. 20. *Cowell.* *Blount.*

In criminal law. Neglect or light account made of a crime; omission to reveal it. *Misprision of treason* is the bare knowledge and concealment of treason, without any degree of assent thereto, for any assent makes the party a principal traitor. 4 *Bl. Com.* 120. 4 *Steph. Com.* 200. *Misprision of felony* is the concealment of a felony committed by another, without such previous concert with, or subsequent assistance of the latter, as will make the party concealing an accessory before or after the fact. 4 *Steph. Com.* 260. These are misprisisions in the proper sense of the term. Contempts and high misdemeanors were formerly termed *positive misprisisions*. 4 *Bl. Com.* 121.

**MISRECITAL.** In conveyancing. Error in the recital of an instrument. As to the effect of misrecital, see *Shep. Touch.* (by Preston,) 77.

**MISREPRESENTATION.** A false or erroneous representation. A misrepresentation of a material fact, whether it be made through mistake or design, avoids a policy of insurance underwritten on the faith thereof. 1 *Story's R.* 57. See *Representation*.

**MISSATICUM.** L. Lat. [from *mittere*, to send.] In old European law. A message, (*nuncium*.) *Spelman.*

The jurisdiction, circuit or territory of a *missus*, (q. v.) *Id.*

**MISSILIA.** Lat. [from *mittere*, to send or throw.] In the Roman law. Gifts or liberalities, which the prætors and consuls were in the habit of *throwing* among the people. *Inst.* 2. 1. 45.

**MISSING SHIP.** In maritime law. A vessel is so called when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. 2 *Duer on Ins.* 469. It is

identical in meaning with the phrase "out of time," but is used by merchants and insurers in a different sense. *Id. ibid.*

**MISSIO.** Lat. [from *mittere*, to send or put.] In the civil law. A sending or putting. *Missio in bona*; a putting the creditor in possession of the debtor's property. 1 *Mackeld. Civ. Law*, 378, § 344. 4 *Reeves' Hist.* 20. 2 *Kames' Equity*, 208.

*Missio judicum in consilium*; a sending out of the *judices* (or jury,) to make up their sentence. *Hallifax, Anal.* b. 3, c. 13, num. 31.

**MISSIVES.** In Scotch practice. Writings passed between parties as evidence of a transaction. *Bell's Dict.*

**MISSUS**, (plur. **MISSI**.) L. Lat. [from *mittere*, to send.] In old European law. A legate; a messenger, (*nuncius*;) a commissary, or commissioner, (*commissarius*;) a deputy, substitute or representative, (*vicarius*;) an attorney. *Spelman.* One who was *sent* on the business of another.

*Missus regalis*; a king's legate, commissary or commissioner; a king's justice. *Spelman.*

*Missus dominicus*; a king's justice or commissioner; an extraordinary and itinerant judge. *Spelman.* *Esprit des Loix*, liv. 28, c. 28. 1 *Rob. Charles V.* Appendix, note xxiii. See *Steph. Lect.* 81, 197.

**MIST.** L. Fr. Put. See *Mitter*.

**MISTAKE**, in equity, as distinguished from *accident*, is some unintentional act, or omission or error, arising from ignorance, surprise, imposition or misplaced confidence. 1 *Story's Eq. Jur.* § 110.

**MISTERIUM.** L. Lat. [from L. Fr. *mestier*.] A trade or occupation; a mystery. *Spelman.*

**MISTRIAL.** In practice. A false or erroneous trial, as where it is in a wrong county. *Cro. Car.* 284.

**MISUSER.** Abuse of an office or franchise. 2 *Bl. Com.* 153.

**MITIOR SENSUS.** L. Lat. The milder or more favorable sense. It was the old rule to construe slanderous words in the mildest sense, and to arrest the judgment if it was found possible to take them in any other sense than that of imputing a felony, or infamous misdemeanor. See 4 *Co.* 13 a. The old doctrine of *mitior sensus* is now, however, altogether exploded; and where words may be taken in a double sense, the court, after verdict, will always construe them in that sense which

may support the verdict. *Cooke's Law of Defamation*, 13. 8 *Mod. R.* 24, 240.

**Mitius imperanti melius paretur.** The more mildly one commands, the better is he obeyed. 3 *Inst.* 24.

**MITTA.** L. Lat. [from Sax. *mitten*.] An ancient Saxon measure in use before the Conquest, the quantity of which is not known with certainty; some holding it to be the same with *corus*, others with *modius*, (a bushel,) and others that it was a measure of ten bushels. *Blount. Cowell. Spelman.*

**MITTER.** L. Fr. To put (a case;) to suppose. *Mountague mist cest case. Dyer*, 23 b.

**MITTER AVANT.** L. Fr. In old practice. To put before; to present before a court; to produce in court. *Mist avant un fait*; produced a deed. *Yearb. M. 5 Edw. III.* 119.

**MITTER LE DROIT.** L. Fr. In old English law. To put or pass the right; passing the right. 2 *Bl. Com.* 325. *En aucun cas, un releas urera de mitter tout le droit que il que fait le releas ad, à celui à que le release est fait*; in some cases, a release shall enure to put all the right which he who maketh the release hath, to him to whom the release is made. *Litt.* sect. 306. See *Hale's Anal.* sect. xxxv.

**MITTER L' ESTATE.** L. Fr. In old English law. To put or pass the estate; passing the estate. *Ascun foits un releas prendra effect et urera pur mitter l' estate de celui que fist le release à celui à que le releas est fait*; sometimes a release shall take effect and enure to put the estate of him which makes the release, to him to whom the release is made. *Litt.* sect. 305. 2 *Bl. Com.* 325. See *Release*.

**MITTERE.** Lat. To send; to put. *Mittere in confusum*; to put in hotchpot; to put into a common stock. *LL. Longobard.* b. 2, tit. 14, c. 15. 2 *Bl. Com.* 190. *Nec super eum mittemus*; nor will we send upon him; that is, we will not send any judge or commissioner to condemn him. *Magna Charta*, c. 29. 2 *Inst.* 46. 1 *Reeves' Hist.* 249. See *Missus dominicus. Quod me extunc possim in terram illam mittere*; that I may thereafter put myself into that land. *Fleta*, lib. 3, c. 9, § 18.

**MITTIMUS.** L. Lat. [from *mittere*, q. v.] (We send.) In old practice. A writ by which records were removed and transferred from one court to another. *Reg. Orig.* 169 b, 170.

In criminal practice. A precept or warrant granted by a justice, for committing an offender to gaol, where bail is not allowed, or cannot be obtained.\* 4 *Bl. Com.* 300.

**MITTOMUS.** L. Fr. [from *mitter*, q. v.] Let us suppose; put the case; admit. *Litt.* sect. 302.

**MIXED ACTION.** [Lat. *actio mixta*, or *mista*.] In the civil law. An action in which some specific thing was demanded, and also some personal obligation claimed to be performed; or, in other words, an action which proceeded both *in rem* and *in personam*. *Inst.* 4. 6. 20. *Hallifax, Anal.* b. 3, c. 1, num. 5.

An action in which each party was an actor; such as the actions of *finium regundorum*, *familiæ erciscundæ*, *communi dividundo*, and the like. *Dig.* 44. 7. 37. 1.

In the common law. An action partaking of the nature both of a real and a personal action; wherein some real property is demanded, and also damages for a wrong sustained. 3 *Bl. Com.* 118. Now abolished in England, with the exception of the action of ejectment. *Stat.* 3 & 4 *Will. IV.* c. 27.

**MIXED, (or COMPOUND) LARCENY.** In criminal law. That kind of larceny which also includes in it the aggravation of a taking from one's house or person. 4 *Bl. Com.* 229. See *Larceny*.

**MIXED TITHES.** In English law. That species of tithes which consists of natural products, but nurtured and preserved in part by the care of man; as of wool, milk, &c. 2 *Bl. Com.* 24.

**MIXTUM IMPERIUM.** Lat. In old English law. Mixed authority; a kind of civil power. A term applied by Lord Hale to the power of certain subordinate civil magistrates, as distinct from jurisdiction. *Hale's Anal.* sect. xi.

**MOBILIA.** Lat. Moveables; moveable things; otherwise called *res mobiles*. In the civil law, this term properly denoted inanimate objects; animals being designated as *moventes*, or *se moventes*, (things moving themselves.) In a more general sense, however, it included both. *Dig.* 50. 16. 93. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 3, § 389. *Fleta*, lib. 2, c. 57, § 6.

**Mobilia personam sequuntur, immobilia situm.** Moveable things follow the person, immovables their site or locality. 1 *Hub.*

*Prælec.* 278. 2 *Id.* 542. *Hub. de Conflict. Leg.* sec. 15. Wills of *chattels*, executed according to the laws of the place of the testator's *domicil*, will pass personal property in all other countries, though not executed according to their laws. But wills concerning *land* must be executed according to the prescribed formalities of the state in which the land is situated. 4 *Kent's Com.* 513. See 2 *Id.* 67. 2 *Greenl. Evid.* § 668. An established maxim of public or international law. *Bynk. Quæst. Jur. Priv.* lib. 1, c. 16. *Phillimore on Domicil*, 6.

**MOBILIS.** Lat. [from *movere*, to move.] Moveable. See *Res mobiles*.

**MODALIS.** L. Lat. [from *modus*, q. v.] In old English law. Having the character of a *modus*; qualified; enlarged or restricted. *Non conditionalis nec modalis*; not conditional nor qualified. *Bract.* fol. 23.

**MODERAMEN INCULPATÆ TUTELÆ.** Lat. In the Roman law. The regulation of justifiable defence. A term used to express that degree of force in defence of the person or property, which a person might safely use, although it should occasion the death of the aggressor. *Calv. Lex. Bell's Dict.* Otherwise called *inculpatæ tutelæ moderatio*. *Cod.* 8. 4.

**MODIUS.** Lat. In old English law. A bushel. *Cowell. Spelman.*

A larger measure, of uncertain quantity. *Id.*

A measure of land. *Id.*

**MODO ET FORMA.** L. Lat. In manner and form. Words used in the old Latin forms of pleading by way of traverse, and literally translated in the modern precedents, importing that the party traversing denies the allegation of the other party, not only in its general effect but in the exact *manner and form* in which it is made. *Steph. Pl.* 189, 190. As to the effect of this expression, and how it is to be supported by proof, see *Id. ibid.* Even in the old law, *modo et forma* were, in many cases, mere words of form. *Litt.* sect. 483, 485.

**MODUS.** Lat. In old conveyancing. Mode; manner; the arrangement or expression of the terms of a contract or conveyance; the settling of the *manner* in which an agreement shall be made, or the *manner* in which land shall pass; the expression, by a grantor of land, of the particular *manner* in which the land given shall be held, or what estate shall be had

in it, as whether it shall be held for years, for life or in fee; whether by one, or by several; and if by several, whether simultaneously, or successively, &c. *Bract.* fol. 17. And see the maxim, *infra*.

A qualification, involving the idea of variance or departure from some general rule or form, either by way of restriction or enlargement, according to the circumstances of a particular case, the will of a donor, the particular agreement of parties, and the like. See *infra*.

Bracton furnishes the best as well as the oldest illustration of this sense of the term, which was chiefly applied in his time to the then prevailing form of conveyance called *donatio*, or gift. A simple and pure gift was one made without any qualification or condition annexed to it, (*simplex et pura dici poterit, ubi nulla est adjecta conditio nec modus*;) as where a man gave land to another for his homage and service, to have and to hold to him and his heirs, of the donor and his heirs, rendering therefor annually so much, at such periods, &c. This was the ordinary form of donation, in accordance with the general rules of law of the period. But the donor might depart from this form if he chose, and *enlarge* the gift, (in Bracton's words,) by making others *quasi* heirs, who were not in fact heirs, (*augere poterit donationem, et facere alios quasi hæredes, licet revera hæredes non sunt*;) as if he were to say in the gift, "to have and to hold to such a one and his heirs, or to whomsoever he may chose to *give or assign* such land," or, in other words, admitting *assigns* in addition to heirs. And so, on the other hand, he might restrict or limit (*coarctare*) the descent of the land to certain heirs, in exclusion of others. *Bract.* fol. 17, 17 b. It was this species of variation or qualification which was expressed by the technical term *modus*, and this *modus* of the gift was so habitually allowed to prevail even against the general rule of law, as to give rise to two leading maxims which follow.

*Modus* is sometimes translated *form*, but not, as it appears, with accuracy; *form* being the proper translation of the Lat. *forma*, from which *modus* is often distinguished. See *Modo et forma*. Strictly, *modus* denotes the substance of the arrangement; *forma*, its verbal expression.

**Modus et conventio vincunt legem.** Manner and agreement overrule law. *Bract.* fol. 17 b. *Fleta*, lib. 3, c. 9, § 1. *Co. Litt.*

19 a, 116 a, 180. The qualifying manner (*modus*) in which a grantor or donor declares that the thing given or granted shall pass, be held or enjoyed, and the particular arrangement of the terms of a contract (*conventio*) between parties, will be allowed to prevail against a general rule of law. Parties may qualify and even abridge their rights by special agreement.\* The conditions annexed to a grant or devise, the covenants inserted in a conveyance or lease, and the agreements, whether in writing or by parol, entered into between parties, have, when duly executed and perfected, and subject to certain restrictions, the force of law over those who are parties to such instruments or agreements. *Broom's Max.* 303, [538.] *Story on Partn.* § 134. This maxim applies to all contracts not offensive to sound morals, or [contrary] to positive prohibitions by the legislature. *Story on Bailm.* § 32.

**Modus legem dat donationi.** Manner gives law to a gift. *Bract.* fol. 17 b. *Fleta*, lib. 3, c. 9, § 1. *Co. Litt.* 19 a. *Wright on Ten.* 21. *Broom's Max.* [347.] The manner in which an estate is declared to be given by a feoffment (or gift) governs its operation, and the course of the estate under it. If given to a man and his heirs, a fee is passed by the force of these words. But if given to a man, without limiting or expressing any estate, [or, as it may be said, without declaring any *modus*.] the grantee has barely an estate for life.\* 2 *Bl. Com.* 310.

Both the above maxims are constantly quoted in modern law, especially the first, which may be considered as the fundamental principle of the law relating to contracts. *Broom's Max.* 303. Originally, they were rules of the old English law of real estate, and, according to Blackstone, the latter was derived from the feudal maxim, *Tenor est qui legem dat feodo.* 2 *Bl. Com.* 310. It is interesting to trace them both to the following passage of Bracton, which is quoted to complete the illustrations already given: *MODUS ENIM LEGEM DAT DONATIONI, et modus tenendus est contra jus commune, et contra legem, quia MODUS ET CONVENTIO VINCUNT LEGEM; ut si dicatur, do tali tantam terram cum pertinentiis in N. habendam et tenendam sibi et hæredibus suis quos de carne sua, et uxore sibi desponsata, procreatos habuerit. Vel sic: Do tali et tali uxori suæ, vel cum tali filia mea, &c. Habendum et tenendum sibi et hæredibus suis de carne talis uxoris, vel filiarum exeuntibus,*

*vel procreatis vel procreandis; quo casu cum certi hæredes exprimantur in donatione, videri poterit quod tantum fit descensus ad ipsos hæredes communes, per MODUM in donatione appositum, omnibus aliis hæredibus suis à successione penitus exclusis, QUIA HOC VOLUIT DONATOR.* The manner or qualification gives law to the gift, and the manner is to be observed against common right and against law, because manner and agreement overrule law. As if it be said, "I give to such a one so much land, with the appurtenances, in N. to have and to hold to him and his heirs whom he shall have begotten of his own body and his wife that is espoused to him." Or thus, "I give to such a one, and such a one his wife, or with such a one my daughter, &c. to have and to hold to him and his heirs of the body of such wife or daughter issuing, or begotten, or to be begotten." In which case, since certain heirs are expressed in the donation, it will be seen that the descent [of the land] takes place only to the said heirs in common, by the *modus* or qualification annexed in the donation, all the other heirs being wholly excluded from the succession, *because the donor willed this.* *Bract.* fol. 17 b.

**MODUS.** L. Lat. In old conveyancing. A consideration; the consideration of a conveyance, technically expressed by the word *ut*. *Do tali tantam terram, &c. ut det mihi tantum, vel ut inveniat mihi necessaria;* I give to such a one so much land, &c. that he may give [for him to give—in consideration of his giving] me so much, or find me necessities. *Bract.* fol. 18. This was a *modus* in its proper sense, as distinguished from *conditio*, (a condition,) though Lord Coke has held them to be synonymous. If the party wished to superadd a *condition*, the conveyance proceeded in the following terms: *quod nisi accipiens tradenti teneat quod convenit, statim liceat sibi se ponere in terram illam, &c.*; that unless the party receiving possession should keep his covenant with the other, [that is, as to the payment of the *modus*.] it should be lawful for the latter immediately to put himself in possession of the land, &c. *Bract. ub. sup.*

**MODUS DECIMANDI,** (or simply **MODUS.**) L. Lat. In English ecclesiastical law. A particular manner of tithing growing out of custom, different from the general law of taking tithes in kind. 2 *Bl. Com.* 29. 13 *Mees. & W.* 822.

**MODUS DE NON DECIMANDO.**

L. Lat. In English ecclesiastical law. A prescription for not tithing; a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 *Bl. Com.* 31. This application of the word *modus* is very reasonably objected to, as inaccurate. 2 *Chitt. Bl. Com.* 31, note. See 15 *Mees. & W.* 419.

MODUS LEVANDI FINES. L. Lat. The manner of levying fines. The title of a short statute in French, passed in the 18th year of Edward I. 2 *Inst.* 510. 2 *Bl. Com.* 349.

MOEBLE. L. Fr. Moveable. *Biens meubles*; moveable goods. *Britt.* c. 11. *Biens meubles et nient meubles.* *Id.* c. 98.

MOERYER. L. Fr. To die. *Kelham.* *Si l'engendrure moerge*; if the issue die. *Britt.* c. 102.

MOHATRA. L. Lat. In the civil law. The name of a kind of contract by which one of the parties sells a thing to the other upon credit, and immediately or soon after, either by himself or by means of an agent, buys it back for a less sum in ready money than the price for which he sold it, for which the other party still remains his debtor. *Pothier, Contr. of Sale*, num. 38. This is condemned in the books as a mere mode of disguising, under the false appearance of a sale, an usurious loan of the sum of money paid. *Id. ibid.* *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1227.

MOIETY. [L. Fr. *moite*, *moitee*, *moyte*, *moytie*, *moytee*, *moigte*; L. Lat. *medietas*.] A half; one of two equal parts. *Co. Litt.* 34 a, b.

MOLENDINUM. L. Lat. [from Lat. *molere*, to grind.] In old English law. A mill. *Reg. Orig.* 96. *Fleta*, lib. 2, c. 71, § 8.

*Molendinum bladonicum*; a corn-mill. *Cowell.*

*Molendinum ventriticum* (or *ventritium*); a wind-mill. *Id.* *Fleta*, lib. 4, c. 1, § 20.

*Molendinum aquaticum*; a water-mill. *Cowell.*

MOLIN. L. Fr. A mill. *Molincweret*; a water-mill. *Yearb.* P. 8 Edw. III. 9.

MOLINUM, *Molinus*. L. Lat. In old European law. A mill. *L. Wisigoth.* lib. 8, tit. 4, l. 30. *L. Salic.* tit. 24, § 1. An older form of *molendinum*, and perhaps the origin of the L. Fr. *molin* or *molyn*, (qq. v.) It occurs also in Domesday Book. *Spelman.*

MOLITURA, *Multura*. L. Lat. In old records. A toll paid for grinding; a multure. *Paroch. Ant.* 120. *Cowell.*

A grist or sack of corn brought to the mill to be ground. *Id.*

MOLLITER MANUS IMPOSUIT. L. Lat. (He) gently laid hands upon. Formal words in the old Latin pleas in actions of trespass and assault, where a defendant justified laying hands upon the plaintiff, as where it was done to keep the peace, &c. The phrase is literally translated in the modern precedents, and the original is retained as the name of the plea in such cases. 3 *Bl. Com.* 21. 1 *Chitt. Pl.* 501, 502. *Id.* 1071.

MOLMUTIAN, (or MOLMUTIN) LAWS. Laws ascribed to Dunwallo Molmutius, sixteenth king of the Britons, (who is said to have begun his reign 444 years before Christ.) *Cowell.* *Blount.*

MOLT. L. Fr. [from Lat. *multus*, much.] Much; many; very. *Est molt grant folye*; it is very great folly. *Fet Assaver*, § 35. *Moltz*; (pl.) many. *Id.* § 32.

MOLUTUS. L. Lat. [corrupted from Lat. *molitus*, from *molere*, to grind.] In old English law. Ground; sharpened by grinding; sharp. *Arma moluta*; sharp weapons, as swords and battle-axes. *Bract.* fol. 144 b. *Spelman.* *Fleta* has *emolitorum*. Lib. 1, c. 31, § 6.

MOLYN, *Molin*. L. Fr. [from L. Lat. *molinum*?] A mill. *Britt.* c. 1. *Molyn ventresse*; a wind-mill. *Kelham.* *Britt.* c. 42.

MOMENTUM. In the civil law. An instant; an indivisible portion of time, (Gr. *ἄτομος*.) *Calv. Lex.*

A portion of time that might be measured, a division or subdivision of an hour, answering in some degree to the modern *minute*, but of longer duration. According to Accursius, ten moments (*momenta*) made a point, (*punctum*), and four points an hour. *Calv. Lex.* Hence, no doubt, the rule stated in Bracton, that an hour consists of forty moments, (*hora fit ex quadraginta momentis*), which has been so far misunderstood as to be pronounced a misprint. *Bract.* fol. 264, 359 b. *Fleta*, lib. 5, c. 5, § 31. See *Hour*, *Hora*.

MOMENTANEUS. L. Lat. In old English law. Momentary. *Seysina momentanea.* *Bract.* fol. 273.

MONACHUS. Græco-Lat. [Gr. *μοναχὸς*, from *μόνος*, alone.] In the civil law. A monk. See *Nov.* 5.

MONASTERIUM. Græco-Lat. and L. Lat. [Gr. *μοναστήριον*.] In civil and old

English law. A monastery; a church. *Nor. 5. Spelman.* Hence, according to Spelman, the Sax. *mynster* and *munster*. And probably, also, the L. Fr. *monstre*, (q. v.)

MONATH, *Moneth.* Sax. [from *mona*, the moon.] Month; a month. *Beda*, lib. *de temp. rat.* c. 13. *Spelman.*

MONEIA. L. Lat. [from L. Fr. *monnoye*.] In old English law. Money. This form occurs in Domesday, and is doubtless the immediate origin of the modern English word. *Spelman.*

MONETA. Lat. [from *monere*, to warn, because by the impression upon it we are warned whose it is, (that is, by whom coined.) and what is its value.] In civil and old English law. Money. *Falsa moneta*; counterfeit money. *Cod.* 9. 24. *Monetam conterfactam. Mem. in Scacc.* M. 22 Edw. I. *De moneta et cambio domini regis*; of the money and exchange of the lord the king. *Bract.* fol. 117.

MONETARE. L. Lat. [from *moneta*, q. v.] In old English law. To coin money. *Monetandi jus comprehenditur in regalibus quæ nunquam a regio sceptro abdicantur.* The right of coining money is comprehended among those royal prerogatives which are never relinquished by the royal sceptre. *Dav. R.* 18.

*Monetarium*; a mint. *Towns. Pl.* 180, 260.

*Monetarius*; a moneyer, or coiner. *Fleta*, lib. 1, c. 22, § 6. See *Monier*.

MONETH. An old form of *month*. 3 *Leon.* 16.

MONEY, MONEYS. [Lat. *moneta*, q. v.] Cash; that is, gold and silver, or the lawful circulating medium of the country, including bank notes, when they are known and approved of, and used in the market as cash. *Co. Litt.* 207 a. Lord Ellenborough, 13 *East*, 20. Kent, C. 1 *Johns. Ch. R.* 236. The word "moneys" in a will does not comprehend bonds, mortgages, and other choses in action, when there is nothing in the will to show that the testator intended to use the word in that extended sense. 14 *Johns. R.* 1.

MONEY OF ADIEU. In French law. A kind of earnest money. Explained by Pothier to be so called, because it is a piece of money given by the buyer to the seller, when the parties, after having concluded their bargain, separate and say "Adieu." *Poth. Contr. of Sale*, num. 507. But is it not rather a French form

of the Lat. *denarius Dei*, and English *God's penny*? (qq. v.)

MONEY COUNTS. In pleading. A species of common counts, so called from the subject matter of them; embracing the *indebitatus assumpsit* count for money lent and advanced, for money paid and expended, and money had and received, together with the *insimul computassent* count, or count for money due on an account stated. 1 *Burr. Pr.* 132.

MONIED CORPORATION. Construed by statute, in New-York, to mean "every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances." 1 *Rev. Stat.* [598, § 51,] 601, § 61. See 3 *Comstock's R.* 479.

MONIER, *Moneyer*. [L. Lat. *monetarius*.] In old English law. A minister of the mint, who made and coined the king's money. There were several of these *moniers* or workmen; "some to shear the money, some to forge it, others to beat it broad, some to round it, and some to stamp or coin it." *Cowell*, vocc. *Moniers*, *Mint*.

A banker; one who dealt in money. *Cowell*.

MONIALA. L. Lat. In old English law. A nun. *Stat. Westm.* 2, c. 34. In *Fleta*, the word is written *monialis*. Lib. 1, c. 39, § 4. *Id.* lib. 2, c. 1, § 11.

MONITION. [Lat. *monitio*, from *monere*, to warn.] In admiralty practice. The summons to appear and answer, issued on filing the libel; which is either a simple monition *in personam*, or an attachment and monition, *in rem*. *Benedict's Adm. Pr.* 228, 239. It is sometimes termed monition *viis et modis*, and has been supposed to be derived from the old Roman practice of summoning a defendant. *Johnson*, J. 10 *Wheaton's R.* 490.

MONMAISTRE. L. Fr. My master. A term of respect applied to a judge. *Yearb.* M. 3 Hen. VI. 12, 15.

MONOMACHIA. Græco-Lat. [from Gr. *μόνος*, alone or single, and *μάχη*, fight.] Single fight; a combat between two; (*singularis pugna inter duos*.) Sometimes used as another name for the *duellum* or judicial combat; but applied by Lord Coke to the modern duel. 3 *Inst.* 157.

MONOPOLIUM. Græco-Lat. [from Gr. *μόνος*, alone, and *πωλεῖν*, to sell.] The sole power, right, or privilege of sale; monopoly; a monopoly. *Calv. Lex. Cod.* 4.

59. *Grot. de Jur. Bell.* lib. 2, c. 12, § 16. *Monopolium dicitur, cum unus solus aliquod genus mercaturæ universum emit, pretium ad suum libitum statuens*; it is called *monopoly*, when one single person buys up the whole of a commodity, fixing on it a price at his pleasure. 11 *Co.* 86 b.

**MONOPOLY.** [from Lat. *monopolium*, q. v.] The exclusive privilege of selling any commodity. Defined in English law to be "a license or privilege allowed by the king for the sole buying and selling, making, working or using of any thing whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before." 4 *Bl. Com.* 159. 4 *Steph. Com.* 291.

Any exclusive right or privilege.

**MONOYE, Monnoye.** L. Fr. Money. *De fauseours de sealx et de monoye.* *Britt.* c. 4.

**MONSTER.** [Lat. *monstrum, partus monstrosus.*] A prodigious birth; a human birth or offspring not having the shape of mankind; which cannot be heir to any land, albeit it be brought forth in marriage. *Bract.* fol. 5. *Co. Litt.* 7, 8. 2 *Bl. Com.* 246.

**MONSTER, Monstre, Mouster, Mustre.** L. Fr. A church; a monastery. *Britt.* c. 1.

**MONSTRANS DE DROIT.** L. Fr. In English law. A showing or manifestation of right; one of the common law methods of obtaining possession or restitution from the crown, of either real or personal property. It is the proper proceeding when the right of the party as well as the right of the crown appears upon record, and consists in putting in a claim of right grounded on facts already acknowledged and established, and praying the judgment of the court, whether upon these facts, the king or the subject hath the right. 3 *Bl. Com.* 256. 4 *Co.* 54 b. A proceeding under this name is in use in Virginia. 12 *Grattan's R.* 564.

**MONSTRANS DE FAITS.** L. Fr. In old English practice. A showing of deeds; a species of profert. *Cowell. Hale's Anal.* sect. xxxv.

**MONSTRAT** per vultum quid sit sub corde sepultum.

He shows by his countenance what is buried in his heart. An old verse quoted by Fleta, lib. 3, c. 15, § 10.

**MONSTRAVIT,** (he hath showed,) and **MONSTRAVERUNT,** (they have showed.) In old English practice. A writ for the relief of tenants in ancient demesne, where

they had been distrained to do to their lords other services or customs than they or their ancestors had used to do. *Reg. Orig.* 14. *F. N. B.* 14 D. So called from the word with which the body of the writ commenced.

**MONSTRE.** L. Fr. Shows. See *Ceo.*

**MONTES.** Span. In Spanish law. Forests or woods. *White's New Recop.* b. 2, tit. 1, c. 6, § 1.

**MONTH.** [O. Eng. *moneth*, from Sax. *monath*; Lat. *mensis.*] A well known division of a year, being either a *lunar* month, consisting of twenty-eight days or four weeks, or a *calendar* month, consisting of from twenty-eight to thirty-one days.\* *Co. Litt.* 135 b. 2 *Bl. Com.* 141.

By the common law of England, a *month* is, in matters temporal, a *lunar* month. 1 *Steph. Com.* 265. 2 *Bl. Com.* 141. The reason of which rule is explained to be, "not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks." Therefore a lease for "twelve months" is only for forty-eight weeks; but if it be for "a twelve-month," in the singular number, it is good for the whole year. *Id. ibid.* In statutes and deeds, "*month*" means a *lunar* month, unless expressly described as *calendar*, or so appearing from the context. *Com. Dig.* Ann. B. 1 *M. & S.* 113. So, in all contracts, unless a contrary intention appear, or unless a general understanding of trade to the contrary be proved. *Willes' R.* 585. 4 *Mod.* 185. 1 *Stra.* 446. So, in all legal proceedings, unless the month be expressly described as *calendar*. 3 *Burr.* 1455. 1 *Bla. R.* 450. *Dougl.* 463, 446. 2 *Chitt. Bl. Com.* 140, note.

In ecclesiastical matters, on the other hand, "*month*" means a *calendar* month. 2 *Roll. Abr.* 521, 51. 6 *Co.* 61 b, *Catesby's case.* *Hob.* 179. 1 *Bla. R.* 450. 1 *Steph. Com.* 265. So, by the custom of trade, as in case of bills of exchange and promissory notes, a *month* is deemed a *calendar* month. 3 *Brod. & B.* 187. This, indeed, is the universal rule of the commercial world, in regard not only to negotiable instruments, but all commercial contracts. *Story on Bills*, § 330.

In the United States, the old English rule is considerably impaired, and the term "*month*" usually computed, and especially in statutes and judicial proceedings, as *calendar*. 4 *Kent's Com.* 94, 95,

note. 4 *Dallas' R.* 142. 5 *Grattan's R.* 285. 21 *Alabama R.* 47. In Georgia, however, the English rule has been followed. *Dudley's R.* 107. In New-York, it has been expressly reversed, it being declared by statute that whenever the term "month" or "months" is or shall be used in any statute, act, deed, verbal or written contract, or any public or private instrument whatever, it shall be construed to mean a calendar and not a lunar month, unless otherwise expressed. 1 *Rev. Stat.* [606.] 615. § 4.

**MONUMENTUM**, *Monimentum*. L. Lat. In the civil and common law. A monument; a memorial; a chronicle or record. *Calv. Lex.* *Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia*; the memorials which we call records are the traces of truth and of antiquity. *Co. Litt.* 118.

**MONYA**. In Norman law. Moneyage. A tax or tribute of one shilling on every hearth, payable to the duke every three years, in consideration that he should not alter the coin. *Hale's Hist. Com. Law*, 148, and note.

**MOOT**. [L. Lat. *mota*, from Sax. *gemote*, a meeting or court, according to Spelman; from Lat. *movere*, to move or agitate, according to Mr. Crabb.] In English practice. An argument of causes by way of exercise; an argument of fictitious causes, with formalities resembling those of a court. *Moots* were a sort of exercise in the inns of courts, usually performed by students of a certain standing, preparatory to their commencing practice. *Crabb's Hist.* 564. Plowden observes, in his preface, that he was a constant attendant "at *moots* and lectures," while a student.

To **MOOT**, (anciently, To **MOTE**.) To argue (*placitare*;) to argue by way of exercise; to argue a fictitious case in form of law. See *Moot*.

To agitate a point by argument, without determining it; to raise a question for argument.

**MOOT**. (adj.) A subject for argument; unsettled; undecided. As a *moot* case, a *moot* point.

**MOOTING**. The exercise of arguing questions of law or equity, raised for the purpose. See *Moot*.

**MOOT COURT**. A court held for the arguing of moot cases or questions.

**MOOT HALL**. The place where moot cases were argued.

VOL. II.

**MOOT HILL**. [L. Lat. *mallobergium*, *mons placiti*.] In old English law. A hill of meeting or council; an elevated place in the open air, where public assemblies or courts were held by the Britons. *Wharton's Lex.* In Scotland they were called *Mute hills*, as the famous Mute hill of Scone. *Spelman*, voc. *Mallobergium*. In Ireland, *Partly hills*. *Id. ibid.* See *Mote*, *Mute*.

**MOOT MAN**. One who argued moot cases in the inns of court.\* One who argued readers' cases in inns of chancery, both in terms and grand vacations. 3 *Co. pref.* From these mootmen, after eight years' study, or thereabouts, were chosen utter barristers. *Id.*

**MORA**. Lat. In the civil law. Delay; default; neglect; culpable delay or default. *Calv. Lex.* 1 *Kames' Equity*, 324. See *In mora*.

Delay in fulfilling an obligation, as in the payment of money. *Dig.* 32. 1. 32. Said to be of difficult definition. *Id. pr.* *Nulla intelligitur mora ibi fieri, ubi nulla petitio est*; no delay is understood to be made where there is no demand. *Id.* 50. 17. 88.

**Mora reprobatur in lege**. Delay is reprobated in law. *Jenk. Cent.* 51, case 97.

**MORA**. L. Lat. In old English law. A moor; a more barren and unprofitable ground than a marsh. *Reg. Orig.* 2. *Fleta*, lib. 2, c. 71, § 7. *Co. Litt.* 5 a. *Shep. Touch.* 95.

**Mora mussa**; a watery or boggy moor; a moss or morass. 2 *Mon. Angl.* 306 b. *Cowell*.

**MORAL CERTAINTY**. In the law of criminal evidence. That degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads. *Wills' Circ. Evid.* 7.—A certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. *Shaw, C. J. in Commonwealth v. Webster, Bemis' Report of the trial*, 470.—A high degree of impression of the truth of a fact, falling short of absolute certainty, but sufficient to justify a verdict of guilty, even in a capital case. See *Burr. Circ. Ev.* 198—200.

**MORARI**. Lat. In old English law. To delay; to pause or rest. *Moratur in lege*; (he) rests or pauses in law; (he) demurs. See *Demorari*.

**MORBUS.** Lat. In the civil law. Disease; sickness. Defined by Sabinus (quoted by Ulpian in the Digests,) *habitus cujusque corporis contra naturam, qui usum ejus ad id facit deteriore, cujus causâ natura nobis ejus corporis sanitatem dedit*; an unnatural habit of body, which impairs its use for that purpose for which nature gave us soundness of body. *Dig.* 21. 1. 1. 7. It was distinguished from *vitium*, (fault or vice.) *Id. ibid.* See *Dig.* 50. 16. 101. 2.

**MORBUS SONTICUS.** Lat. In the civil law. A sickness which rendered a man incapable of attending to any business, (*qui cuique rei nocet.*) *Dig.* 50. 16. 113. 1 *Mackeld. Civ. Law*, 137, § 127, note.—A sickness of the severer kind, having the power of causing great pain. *A. Gellius, Noct. Att. lib.* 20, c. 1.—A sickness which excused a non-appearance in court. *Calv. Lex. Adam's Rom. Ant.* 245, 272. Bracton uses this term in treating of the law of essoins, but gives it the meaning of an incurable disease. *Bract. fol.* 344 b. See *Sonticus*.

**MORBOSUS.** Lat. [from *morbis*, q. v.] In the civil law. Diseased. See *Dig.* 21. 1. 1—16.

**MORE COLONICO.** Lat. In old pleading. In husband-like manner. *Towns. Pl.* 198.

**MORE OR LESS.** [Lat. *sive plus, sive minus.*] A phrase frequently used in describing the quantity of land conveyed by a deed or lease; as, "containing by estimation — acres, *more or less*;" or, "containing in breadth, in front and rear, — feet, and in length on each side, — feet, be the same *more or less*." It imports that the quantity conveyed is uncertain, or is not warranted; and is adopted by way of precaution in cases where it is possible that there may be a deficiency on actual admeasurement, and the party does not mean to bind himself as to the quantity. In such an event, a small deficiency or a reasonable difference would not be regarded, but a large deficiency, such as 100 acres short, in land described as "349 acres, more or less," would not be tolerated. 2 *Russ. R.* 570. 2 *B. & Adol.* 106. 1 *Chitt. Gen. Pr.* 180. It imports, on the other hand, that in case of the quantity of land proving to be *more* than that described, the grantee or lessee is to have the benefit of it; but in this case, also, it is to be understood within reason-

able limits. Thus, it was held that the description of "a house in B. and *ten* acres of land there, *sive plus, sive minus*," would not include *thirty* acres usually occupied with the house. *Owen*, 133. See 1 *Ves. & Bea.* 375. *Coventry on Conveyancers' Evidence*, 34, 35. 2 *Johns. R.* 37. 8 *Paige's Ch. R.* 312. See *Plurisve*.

Where a party covenants to make a deed to a certain quantity of land "more or less," these words mean that where there is only an inconsiderable deficiency as to the quantity of land, the vendor is not to submit to a deduction from the amount of the purchase money, if the tract of land contains less than the amount; nor is the purchaser to pay more than the sum stipulated, if the tract contains a greater number of acres. The risk in this respect is mutual. The vendor risks as to the sum of money, and the vendee as to the quantity of the land. *Phipps v. Tarpley*, 24 *Mississippi R.* 597. In this case, the tract was represented by the vendor to contain 1,000 acres, whereas, upon a survey, it fell short about 80 acres. This was held to be an inconsiderable deficiency. *Id. ibid.* In Texas, the words "more or less" have been held to cover a deficiency of 5 out of 41 acres. 13 *Texas R.* 223. They are sometimes rejected. See 20 *Howard's R.* 413.

**MORGANATIC MARRIAGE.** In old European law. A marriage between a man of superior, and a woman of inferior rank, in which it was stipulated that the latter and her children should not enjoy the rank or inherit the possessions of her husband. *Brande. Shelford, Marr. & Div.* 9, 10. This kind of marriage still subsists in Germany, under the appellation of a *left-handed marriage*. *Id. ibid.* The earliest and clearest description of it is to be found in the Books of Feuds, in which it is treated as a Milanese custom. *Feud. Lib.* 2, tit. 29.

Some have derived this word from the Goth. *morgjan*, to shorten, but Spelman traces it to *morgangiva*, (q. v.)

**MORGANGIVA, Morgengeba.** L. Lat. [Lomb. *morgingap*; Sax. *morgan gyfe*; from *morgin*, morning, and *gab*, a gift.] In old European law. A gift made to a wife on the morning of the nuptial day; a species of dower, which Spelman compares to the English dower *ad ostium ecclesiæ*. This word occurs in the laws of the Burgundians, Alamanni, Ripuarians and

Lombards, and also in the laws of Canute. *LL. Canuti*, c. 71. *Spelman*.

MORGEN. Anglo-Dutch. In old New-York law. A measure of land, equal to about two acres. *O'Callaghan's New-Netherlands*, vol. 2. Appx. 593.

MORGENGAB. Germ. In German or Dutch law. Morning gift; a species of dower. A gift made to the wife on the morning after the marriage. *Skene de Verb. Signif.* voc. *Dos*. See *Grot. de Jur. Bell.* lib. 2, c. 7, § 8, n. 3. See *Morgangiva*.

MORIER, *Mourir*, *Moeryer*, *Moire*, *Muire*, *Murer*, *Murger*. L. Fr. [from Lat. *morior*, *moriri*, to die.] To die. *Kelham*. L. Fr. Dict. *Moront*, *moreaunt*; they die. *Id.* *Morant*; dying. *Id.* *Morera*; shall die. *Id.* *Morust*; died. *Id.*

MORINA. L. Lat. In old English law. Murrain; a disease of sheep. *Fleta*, lib. 2, c. 79, § 6.

MORS. Lat. Death. *Mors dicitur ultimum supplicium*; death is called the last punishment, the extremity of punishment. 3 *Inst.* 212.

*Mors omnia solvit*. Death dissolves all things. *Jenk. Cent.* 160, case 2. Applied to the case of the death of a party to an action. *Id.*

MORSELLUM TERRÆ. L. Lat. In old records. A small parcel or bit of land. *Cowell*.

MORT D' ANCESTOR. L. Fr. The name of a species of assise, founded on the death of an ancestor. See *Assise of mort d' ancestor*.

MORTGAGE. L. Fr. and Eng. [from *mort*, dead, and *gage*, security; L. Lat. *mortuum vadium*.] In old English law. A dead or unproductive pledge; a pledge of moveables or immoveables by one person to another, as a security for a debt. Called *dead*, because the contract was that the fruits or rents arising from the thing pledged should not go towards paying off the demand for which it was pledged; or, in Glanville's words, *cujus fructus vel redditus interim percepti in nullo se acquietant*. *Glanv.* lib. 10, c. 6. 1 *Reeves' Hist.* 161. It was thus distinguished from what was called a living pledge, (*vivum vadium*, or *vif gage*), in which the rents and profits went towards the discharge of the debt. *Crabbs' Hist.* 108.

In modern law. The conveyance of an estate, by way of pledge for the security of debt, and to become void on payment

of it. 4 *Kent's Com.* 135. A conveyance of lands, chattels or other subjects of property as a security for a debt, upon a condition, which in substance is that if the sum due shall be paid at a certain time the conveyance shall be void, otherwise to become absolute; the latter alternative, however, taking effect subject to the right or equity of redemption, (q. v.)\* 2 *Bl. Com.* 157—159. 4 *Kent's Com.* 135, 162, et seq.—A debt by specialty, secured by a pledge of lands, of which the legal ownership is vested in the creditor, but of which, in equity, the debtor and those claiming under him remain the actual owners, until debarred by judicial sentence or their own laches. *Coote on Mortgages*, 1. See 1 *Steph. Com.* 282—285. 2 *Crabbs' Real Prop.* 845, § 2202.

The term *mortgage* has a definite, technical legal signification, and imports a defeasance and an equity of redemption. 1 *Wisconsin R.* 420. See 6 *Texas R.* 110, 294. As to when a deed will be considered a mortgage, see 12 *Howard's R.* 139. 1 *Wisconsin R.* 527. And see *United States Digest*, Mortgage.

According to Littleton, Coke and others, a mortgage is so called, (*dead* pledge,) because in case of non-payment of the debt at the time limited, the land was forever *dead*, and gone from the mortgagor, and in case of payment it became *dead* as to the mortgagee. *Litt. sect.* 332. *Co. Litt.* 205 a. 2 *Bl. Com.* 158. But the explanation of Glanville (*supra*) gives a much more satisfactory account of the origin of the word. *Coote on Mortgages*, 9—11. This word seems to have been sometimes written *morgage*, before the pure French form was adopted. *Litt. ub. sup.* *Spelman*, voc. *Mortuum vadium*. See *Mortgage*.

MORTGAGE OF GOODS. A conveyance of goods in *gage*, or mortgage, by which the whole legal title passes conditionally to the mortgagee; and if the goods are not redeemed at the time stipulated, the title becomes absolute in law, although equity will interfere to compel a redemption. *Story on Bailm.* § 287. It is distinguished from a *pledge* by the circumstance that possession by the pledgee is not, or may not be, essential to create or to support the title. *Id. ibid.* See 2 *Kent's Com.* 522—532. 4 *Id.* 138.

MORTGAGEE. The party to whom a mortgage is made or given; the party

taking a mortgage, in whom the legal estate vests, subject to be defeated upon performance of the condition. 4 *Kent's Com.* 154. Written *morgagee* in *Yearb.* M. 7 Hen. VI. 26.

**MORTGAGOR.** The party who gives a mortgage; the party mortgaging, and who in equity is considered as the real owner, until a decree of foreclosure. 4 *Kent's Com.* 159. Written *morgageor* in *Yearb.* M. 7 Hen. VI. 26.

**MORTIFICATION.** In Scotch law. A term nearly synonymous with *mortmain*. *Bell's Dict.* 5 *Bell's Ap. Cas.* 409. Lands are said to be *mortified* for a charitable purpose.

**MORTMAIN.** L. Fr. [from *mort*, dead, and *main*, hand; L. Lat. *mortua manus*.] A dead hand; a condition of property in which it is held without the power of change or alienation.\* A term originally applied to the possession of land by ecclesiastical bodies, the members of which (being professed,) were reckoned *dead* persons in law. 2 *Bl. Com.* 479. Afterwards applied to purchases and acquisitions by *any* corporate body. *Stat.* 15 Ric. II. c. 5. Hence the statutes prohibiting conveyances of lands by deed or will to a corporation, were termed *statutes of mortmain*, or *mortmain acts*. 2 *Bl. Com.* 268—274. 2 *Kent's Com.* 282, 283, and notes.

**MORTUARIUM.** L. Lat. [from *mors*, death.] In old English law. A mortuary, (q. v.) *Fleta*, lib. 2, c. 60, § 30.

**MORTUARY.** [L. Lat. *mortuarium*, from *mors*, death.] In English law. A customary gift claimed by, and due to the minister in very many parishes, on the death of his parishioners; a sort of ecclesiastical heriot. 2 *Bl. Com.* 425. See *Heriot*. Otherwise called a *corse-present*, (q. v.) and in the laws of King Canute *soul-scot*, (q. v.) It seems to have originally been (like a lay heriot,) only a voluntary bequest to the church, being intended, according to Lyndewode, as a kind of expiation and amends to the clergy for the personal tithes and other ecclesiastical duties, which the laity, in their lifetime, might have neglected or forgotten to pay, and it was usually the second best beast or chattel, the best being reserved to the lord. 2 *Bl. Com.* 425. In Bracton's time, however, it had become "rivetted into an established custom," and the bequest of a mortuary was held to be a necessary ingredient in every testament of chattels.

*Bract.* fol. 60. The statute of 21 Hen. VIII. c. 6, reduced these mortuaries to a certainty, by fixing an equivalent to be paid in money, according to the value of the property of the deceased, and upon this statute stands the law of mortuaries to this day. 2 *Bl. Com.* 427. 3 *Steph. Com.* 147.

**MORTUUM VADIUM.** L. Lat. In old English law. A dead pledge; a *mortgage*, or mortgage. *Mortuum vadium dicitur illud cujus fructus vel redditus interim percepti in nullo se acquiescant*; that is called a dead pledge, the profits or rents of which, received in the mean time, in no respect discharge it. *Glanv.* lib. 10, c. 6.

**MORTUUS.** Lat. Dead. *Bract.* fol. 301 b. *Mortuus exitus non est exitus*. A dead issue is no issue. *Co. Litt.* 29. A child born dead is not considered as issue.

A return made by a sheriff, that the party named in the process directed to him is dead. 4 *Watts' R.* 270, 276.

**MOSTRENCOS.** Span. In Spanish law. Strayed goods; estrays. *White's New Recop.* b. 2, tit. 2, c. 6.

**MOT.** Fr. A word. *De mot en mot*; word for word. *Britt.* c. 22.

**MOT BELL.** Sax. Meeting-bell; a bell used by the Saxons to summon the people to the *folcmote*. *Spelman.* See *Folcmote*.

**MOT-WORTHY.** O. Eng. A common-councilman. *Cowell*, voc. *Concionator*.

**MOTE.** Sax. [L. Lat. *mota*; a contraction of *gemote*, Sc. *mute*, q. v.] In Saxon law. A court; a meeting or assembly. *Spelman*, voc. *Mota*, *Gemotum*.

**MOTION.** [Lat. *motio*, from *movere*, to move.] In practice. An application (founded generally on *affidavit*,) made to the judge or judges of a court, *viva voce*, in open court, for the purpose of obtaining a rule or order directing some act to be done in favor of the applicant. It is usually an incidental proceeding to an action, but it may be wholly unconnected with that kind of remedy.\* 3 *Steph. Com.* 679, 680. 1 *Tidd's Pr.* 478.

**MOTIVE.** [from Lat. *movere*, to move, or stir.] In the law of evidence. That which *moves* or influences the mind or will; an emotion, passion or desire which incites or impels to action.

In criminal evidence. An unlawful desire or emotion, awakened by the perception or contemplation of some external

object, or end to be attained by action. This ultimate object is, in fact, the cause or spring of the motive itself, and has sometimes been called the *exterior* or external motive, as distinguished from the desire or passion it creates, which is termed the *interior* or internal motive. See 3 *Benth. Jud. Er.* 183. It is, in other words, the *inducement*, or that which *leads* or tempts the mind to indulge the criminal desire. *Burr. Circ. Evid.* 283, 284.

**MOTUM.** Lat. [from *movere*, to move.] In old English law. Moved; stirred; put in motion; commenced. *Placitum motum*; plea moved; suit commenced. *Flota*, lib. 6, c. 23, § 10.

**MOULDRE.** L. Fr. To grind. *Yearb. M.* 4 Edw. III. 71.

**MOULT, Molt, Mult.** L. Fr. [from Lat. *multus*.] Many; much. *Kelham*. (Plur. *mults, moldes, mous.* *Id.*)

**MOUN.** L. Fr. My. *Moun pierce.* My father. *Yearb. M.* 3 Edw. II. 49.

**MOUNSTER, Mouster, Muster.** L. Fr. [from Lat. *monasterium*.] In old English law. A church; a minster or monastery. *At huys d'mouster*; at the church door. *Britt.* c. 110.

**MOUNTAUNT.** L. Fr. Ascending. *Britt.* c. 119.

**MOVANT, Movaunt.** L. Fr. Moving. *Britt.* c. 1.

**MOVE.** To occasion; to contribute to; to tend or lead to. The forewheel of a wagon was said "to *move* to the death of a man." *Say.* 249. See *Deodand*.

**MOVEABLES.** [L. Fr. *meubles*; Span. *muebles*; Lat. *mobilia, res mobiles*.] Things moveable; moveable or personal chattels, which may be annexed to, or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 *Bl. Com.* 387. *Moveables* consist, first, of inanimate things, as goods, plate, money, jewels, implements of war, garments and the like, or vegetable productions, as the fruit or other parts of a plant when severed from the body of it, or the whole plant itself when severed from the ground; secondly, of animals which have in themselves a principle and power of motion. 2 *Steph. Com.* 67.

In the civil law, moveables (*mobilia*) properly denoted inanimate things; animals being distinguished as *moventia*, things moving. But this distinction was not always observed. *Dig.* 50. 16. 93. *Calv. Lex. Brissonius.* See *Moventes*.

"Moveables," in a will, pass all the personal goods, both quick and dead, which either *move* themselves, as horses, sheep and the like, or may be *moved* by another, as plate, household stuff, corn in garners and barns or in the sheaf, &c.; also all bonds and specialties. *Shep. Touch.* 447. But "moveables" will not carry corn nor fruit growing on the ground, nor stone nor timber prepared for building. *Ward on Legacies*, 210.

**MOVEABLES,** in Scotch law, are opposed to *heritage*. So that every species of property, and every right a man can hold, is by that law either heritable or moveable. *Bell's Dict.*

**MOVENTES.** Lat. [pl. of *movens*, from *movere*, to move.] In old English law. Moving things. *Se moventes*; things moving themselves; animated objects, as distinguished from *mobilia*, (moveables.) *Flota*, lib. 2, c. 57, § 6.

**MOVERE.** Lat. To move; to set in motion; to stir or agitate; to originate or commence. *Movere litem*; to commence a suit. *Alia vice movit ei litem de eadem terra*; on another occasion commenced a suit against him for the same land. *Bract.* fol. 271 b, 274. So, in law French, *en toutz pleas meus et à mover*; in all pleas moved and to be moved. *Britt.* c. 126. To begin a controversy or dispute, before resorting to law. See *Lis mota*.

**MOYEN, Moien.** L. Fr. Mean; intermediate. *Kelham*.

**MOYS, Moyes, Meyes.** L. Fr. A month. *Kelham*.

**MOYTE.** L. Fr. Half; a moiety. *Britt.* c. 119.

**MUEBLES.** Span. In Spanish law. Moveables; all sorts of personal property. *White's New Recop.* b. 1, tit. 3, c. 1, § 2.

**MUET.** L. Fr. [from Lat. *mutus*, q. v.] Dumb. *Ne sourds ne meutz*; nor deaf nor dumb persons. *Britt.* c. 34.

**MUILLERE.** L. Fr. [from Lat. *mulier*, q. v.] The son of a lawful wife; a mulier. *Frere muillere et frere bastard.* *Britt.* c. 70.

**MUIRBURN.** Sc. In Scotch law. The offence of setting fire to a muir or moor. 1 *Brown's R.* 78—116.

**MULCT.** [Lat. *mulcta*.] A pecuniary punishment; a fine. See *Mulcta*.

**MULCTA.** Lat. In the civil law. A mulct or fine; a pecuniary punishment. See the distinction between *mulcta* and *pœna*, *Dig.* 50. 16. 131, 244. *Mulcta dam-*

**num famæ non irrogat.** A mulct does not involve loss of character. *Cod.* 1. 54. *Calv. Lex.*

**MULIER.** Lat. In the civil law. A woman, in general, (*quælibet femina.*) *Calv. Lex.* 8 Co. 102 a.

A marriageable virgin, (*virgo viripotens.*) *Dig.* 50. 16. 13.

A woman not a virgin. *Spiegelius.* 8 Co. 102 a.

A married woman; a wife, (*uxor.*) *Calv. Lex.* 8 Co. 102 a.

A mother. *Dig.* 21. 1. 14. 7.

**MULIER.** L. Lat. In old English and Scotch law. A lawful son; the son of a *mulier*, or lawful wife. *Co. Litt.* 243 b. 8 Co. 102 a. 2 *Bl. Com.* 248. Called by Glanville and Skene, *filius mulieratus.* *Glanv.* lib. 7, c. 1. *Skene de Verb. Signif.*

*Mulier puisné*; a younger lawful son. A term constantly used in the old books in contrast with *bastard eigné*, (an elder bastard son.) 2 *Bl. Com.* 248.

In old records. A wife, or married woman, used as an addition in deeds. *Omnibus—Domina Johanna de Foresta*, mulier, salutem; To all, &c. the lady Johanna de Forest, married woman, Greeting. *Old deed*, cited in *Blount*.

**MULIERTY.** [Fr. *mulerie.*] In old English law. The state or condition of a *mulier*, or lawful issue. *Co. Litt.* 352 b. The opposite of bastardy. *Blount*.

**MULNES.** L. Fr. Middle. *Le mulnes frere*; the middle brother. *Litt.* sect. 5.

**MULTA (or MULTURA) EPISCOPI.** L. Lat. [from Lat. *mulcta.*] In old English law. A bishop's fine; a fine given to the king, that a bishop might have power to make his last will and testament, and to have the probate of other men's, and the granting administrations. 2 *Inst.* 491. *Cowell*.

**Multa conceduntur per obliquum, quæ non conceduntur de directo.** Many things are allowed indirectly which are not allowed directly. 6 Co. 47, *Dowdale's case*.

**Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt.** Many things have been introduced into the common law with a view to the public good, which are inconsistent with sound reason. *Co. Litt.* 70 b. *Broom's Max.* 67, [117.] See *Dig.* 9. 2. 51. 2.

**Multa transeunt cum universitate, quæ non per se transeunt.** Many things pass with the whole, which do not pass separately. *Co. Litt.* 12 a.

**MULTIPLE POINDING.** In Scotch law. Double poinding; double distress. The name of an action resembling a bill of interpleader. *Bell's Dict.*

**MULTIFARIOUS.** [Lat. *multifarius*, from *multus*, many, and *ferre*, to bear, or *fari*, to speak.] In equity pleading. Composed of a variety of distinct and independent matters. See *Multifariousness*.

**MULTIFARIOUSNESS.** In equity pleading. The fault of improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting, in one bill, of several matters perfectly distinct and unconnected, against one defendant, or the demand of several matters of a distinct and independent nature against several defendants, in the same bill. *Story's Eq. Pl.* § 271, *et seq.* See *Mitford's Chanc. Pl.* 181, (208, 216, Moulton's ed. notes.)

**MULTIPLEX.** Lat. Manifold. *Multiplex* [et] *indistinctum parit confusionem; et quæstiones* [quo] *simpliciores eo lucidiores.* That which is manifold and without distinction begets confusion; and the more simple questions are, the clearer are they. *Hob.* 335.

**Multiplicata transgressionem crescat pænæ inflictio.** As transgression is multiplied, the infliction of punishment should increase. 2 *Inst.* 479.

**MULTIPLICITY.** [from Lat. *multiplex*, from *multus*, many, and *plicare*, to fold.] A state of being many. *Webster*. That quality of a pleading which involves a variety of matters or particulars; undue variety. 2 *Saund. R.* 410.

A multiplying or increasing. *Story's Eq. Pl.* § 287.

**MULTITUDE.** L. Fr. and Eng. In old English law. An assembly or collection of persons for some unlawful purpose. Defined by some of the old writers to consist of ten or more; (*multitudinem decem faciunt.*) Lord Coke mentions this, but observes that he could never read it restrained by the common law to any certain number, but left to the discretion of the judges. *Co. Litt.* 257 a.

**Multitudo errantium non parit errori patrocium.** The multitude of those who err furnishes no countenance or excuse for error. 11 Co. 75 a, *Magdalen College case.* *Hardr.* 98, arg. It is no excuse for error that it is entertained by numbers.

**Multitudo imperitorum perdit curiam.**

The great number of unskilful practitioners ruins a court. 2 *Inst.* 219.

MULTO. L. Lat. In old English law. A sheep; a wether. *Fleta*, lib. 2, c. 79, § 4. *Cowell*.

MULTURE. [L. Lat. *multura*, *molitura*, from *molere*, to grind.] In old English law. A grinding of grain at a mill; the grain ground.

The toll or fee due for grinding grain. 2 *Mon. Angl.* 825. *Cowell*. Called *multur* in an old award, 28 Hen. IV. cited by *Blount*.

In Scotch law. A duty paid for grinding in any mill. 1 *Forbes' Inst.* part. 2, p. 140. A quantity of grain payable to the proprietor of a mill, for grinding grain. *Bell's Dict.*

MULVEYN. L. Fr. Middle. *Mulvey* *fitz*; a middle son; one born between two others. *Britt.* c. 107.

MUND, *Munde*. Sax. [L. Lat. *mundium*.] In Saxon law. Protection; defence; peace; (*tutela*, *defensio*, *protectio*, *pax*, *patrocinium*.) When the king took a church, monastery or borough, or any man or company, or their effects or estates into his protection, it was said to be *on cynges munde*, under the king's protection, (*in regis mundio*.) *Spelman*.

MUNDBRICE, *Mundbrich*. Sax. [from *mund*, protection, and *brice*, a breach.] In Saxon law. Violation of the *mund* or king's protection. *Spelman*. See *Mund*. Sometimes confounded with *grithbrice*, or *grithbrech*, (q. v.)

*Mundbrich* is also defined a breaking of enclosures; *mounds* or banks of earth being anciently used for such purposes. *Spelman*.

MUNDEBURDE, *Mundbyrd*. Sax. [from *mund*, protection, and *bord*, *borh*, a pledge; L. Lat. *mundeburdum*, *mundoburdum*, *mundiburdium*.] In Saxon and old European law. A pledge or security for protection, (*patrocinii fidejussio*.) *Spelman*. 1 *Spence's Chancery*, 35, note.

MUNDIUM. L. Lat. In old French law. A tribute paid by a church or monastery to their seignorial avoués and vidames, as the price of protecting them. *Steph. Lect.* 236.

MUNICEPS. Lat. [pl. *municipes*, from *munus*, office, and *capere*, to take.] In Roman law. One who was entitled to hold office. *Municipes dici quod munera civilia capiant*. *Dig.* 50. 16. 18. One who was admitted into a state, with the

privilege of holding office. *Proprie municipes appellantur muneris participes, recepti in civitatem, ut munera nobiscum facerent*. *Id.* 50. 1. 1. A citizen of a foreign town or *municipium*; so called from the privilege of enjoying office at Rome. *Adam's Rom. Ant.* 47, 77. See *Municipium*.

A townsman; one born in the same *municipium*. This was a later, but improper sense. *Dig.* 50. 1. 1. *Id.* 50. 16. 228.

MUNICIPAL. [Lat. *municipalis*, from *municipium*, q. v.] Belonging to a city, town or place having the right of local government; belonging to, or affecting a particular state or separate community. Local; particular; independent. See *Municipium*.

MUNICIPAL CORPORATION. [L. Lat. *villa corporata*.] A public corporation; a corporation created by government for political purposes, and having subordinate legislative powers to be exercised for local purposes, such as a county, city, town or village.\* 2 *Kent's Com.* 275. See *Public corporation*.

MUNICIPAL CORPORATION ACT. In English law. The statute 5 & 6 Will. IV. c. 76, for regulating the municipal corporations in England and Wales. 3 *Steph. Com.* 191, *et seq.*

MUNICIPAL LAW. [Lat. *jus municipale*, *lex municipalis*.] The rule or law by which a particular district, community or nation is governed. 1 *Bl. Com.* 44. The particular law of a state or nation; as distinguished from public or international law.\*—A rule of civil conduct, prescribed by the supreme power in a state. 1 *Bl. Com. ub. sup.* 1 *Kent's Com.* 447. A municipal law, according to the American theory of government, is the expression of the legislative will of the state according to the forms of the constitution. 25 *Mississippi R.* 625.

In a stricter sense,—the local law of a particular place, such as a city or town. Originally, the law of a *municipium*, (q. v.) or free town. *Calv. Lex. voc. Municipalis*.

MUNICIPIUM. Lat. [from *munus*, office or honor, and *capere*, to take.] In Roman law. A foreign town to which the freedom of the city of Rome was granted, and whose inhabitants had the privilege of enjoying offices and honors there; a free town. *Butler's Hor. Jur.* 29. *Adam's Rom. Ant.* 47, 77.

A free or privileged town; one that had

the right of being governed by its own laws and customs. *Id.* 77. Hence the Lat. *municipalis*, and Eng. *municipal*, (q. v.)

In old English law. A castle. *Spelman.*

**MUNIMENTS.** [L. Lat. *munimenta*, *munimina*, from *munire*, to defend.] The evidences or writings whereby a man is enabled to defend the title of his estate. *Blount.* 9 Co. 18. Title deeds and papers; evidences of title. Corrupted to *muniments*, which seems to have once been the common form of the word. The Lat. *munimenta* and *munimina* occur in this sense in the laws of the Lombards. *L. Longobard.* tit. 35, l. 9. *Spelman.*

**MUNIMENT HOUSE.** A place for the safe-keeping of muniments, (q. v.) "A little room of strength" in cathedral and collegiate churches, castles, colleges, &c. purposely made for keeping the seal, evidences, charters, &c. of such church or college. *Blount.*

**MUNUS.** Lat. In the civil law. A gift or present, (*donum*, q. v.) *Dig.* 50. 16. 18. See the distinction between *munus* and *donum*, *Id.* 50. 16. 194. 214.

A charge or duty, (*onus*.) *Id.* 50. 16. 18. Hence *immunitas*. *Id.*

An office (*officium*.) *Id. ibid.* *Id.* 50. 4. 1, 14, 18. And see *Calv. Lex.*

In feudal law. The name first given to what was afterwards termed *beneficium*, and finally *feudum*. *Spelman.* A feudal estate, in its original character of a mere gratuitous donation. *Cowell*, voc. *Benefice*.

**MUR, Mure.** L. Fr. [from *murus*.] A wall. *Par mure ou par haye*; by a wall or by a hedge. *Britt.* c. 61. *Mur abatu*; a wall beaten or thrown down. *Id. ibid.*

**MURAGE.** L. Fr. and Eng. [L. Lat. *muragium*, from *murus*, Fr. *mur*, a wall.] In old English law. A toll or tribute levied for the building or repairing of public walls. *Stat. Westm.* 1, c. 30. 2 *Inst.* 222.

**MURDER.** [L. Fr. *murdre*; L. Lat. *murdrum*; from Teut. *moerda*, or Sax. *morthor*.] In old English law. The secret killing of one human being by another. Homicide privately perpetrated, no one being present, knowing, hearing or seeing it, (*homicidium quod nullo præsente, nullo sciente, nullo audiente, nullo vidente, clam perpetratur*.) *Bract.* fol. 134 b. See *Fleta*, lib. 1, c. 23, § 6; c. 30, § 1.

The private slaying of foreign and

known persons, (*occulta extraneorum et notorum hominum occisio*.) wickedly perpetrated by the hand of man, and which is committed, no one knowing or seeing, except only the slayer and his aiders and abettors, and in such a manner that the hue and cry does not immediately follow, (*ita quod non statim assequatur clamor popularis*.) *Bract.* fol. 134 b. *Fleta*, lib. 1, c. 30, § 1. This was the technical definition of murder in the time of Bracton, founded on another signification of the term, (see *infra*.) and the old law of Englishery. As early as Britton, however, it was modified to mean, "the slaying of an unknown person, feloniously done, when it cannot be known by whom it was committed," (*occision de home desconu, felonisement faite, dont home ne poit saver par que ne par quez*.) *Britt.* c. 6.

A fine or amercement imposed upon the vill or hundred where a person was found killed by another, unless the fact of the slain person having been English (technically called *Englishery*) was duly presented before the justices.

The origin of this imposition (or *murdrum*) is thus explained by Bracton: After the subjugation of England by Canute the Dane, the English barons pledged themselves, in consideration of his sending back his army to Denmark, that as many followers as he chose to retain with him in England, should remain entirely unmolested, and for greater security on this point agreed that if an Englishman should kill a Dane and escape, so that he could not be taken, there should be paid for him sixty-six marks, to be collected in the vill where the slain person was found, or in the hundred, if the vill were too poor to pay it. *Bract.* fol. 134 b. After the conquest by the Normans, a similar regulation was established for the protection of the king's Norman followers or subjects; a fine (called *murdrum*.) being imposed upon the neighborhood, (*patria*) where a Frenchman (*Francigena*.) was found killed, and the slayer was unknown; and to render this the more effectual, it was declared by law that the slain person was always to be presumed to be French, unless the fact of his or her being English was formally presented and proved. Hence the law of Englishery, (q. v.) once so important that the very definition of murder as a crime was made to turn upon the fact that the slain person

was a *foreigner*, (*extraneus*.) See the definition from Bracton, *supra*.

**MURDER.** [L. Lat. *murdrum*, L. Fr. *murdre*, Sc. *murther*.] In criminal law. The killing of a man with malice prepense. 1 *Hale's P. C.* 425. *Plowd.* 261.—The killing of one human being by another, with malice aforethought, express or implied.\* The unlawful killing of any reasonable creature in being, and in the peace of the commonwealth, by a person of sound memory and discretion, with malice aforethought, express or implied.\* 3 *Inst.* 47. 4 *Bl. Com.* 195, *et seq.*

This is substantially the definition of murder in American law, though, in some of the states, modifications have been introduced by statute. *Wharton's Am. Crim. Law*, §§ 930, 884, *et seq.* 1 *Hale's P. C.* 425, (Am. ed. note.) See 1 *Russell on Crimes*, 482, (Am. ed. 1850, note.)

\* \* The radical sense of the word *murder* is a *secret* killing; the term *gemurdrit* or *gamurdrit*, (q. v.) being thus used at the earliest period to which it can be traced. *L. Boior.* tit. 18, c. 2, § 3. So in England, the L. Fr. *murdre* occurs in old statutes in the sense of *concealment* or *stifling*. *Stat. Exet.* 14 Edw. I. And the L. Lat. *murdrare*, (q. v.) is used as an equivalent word by Fleta. Hence the general definition of murder given by Bracton,—a *secret* killing, where it cannot be known who the slayer is. *Bract.* fol. 121, 134 b. To this was superadded the idea of a *felonious* killing (*occisio nequiter perpetrata*.) *Id. ibid.* But the whole definition of the crime by the same author was made a technical one, by being based on that peculiar regulation of the times, called Englishery. It was in substance, “the secret and felonious killing of a *foreigner* (*occulta extraneorum occisio*.”) *Id.* 134 b. This will account for the form of the definitions given by Staundford and others, after Englishery was abolished;—“the wilful and felonious killing of another, whether Englishman or foreigner, secretly or openly.” *Staundf. Pl. Cor.* lib. 1, c. 2. *Cowell.*

“**MURDER.**” “**MURDERED.**” Necessary words in indictments for murder, as *murdrum* and *murdravit*, anciently were. 3 *Bl. Com.* 321. 4 *Id.* 307. *Wharton's Prec. of Indictments*, 42, *et seq.*

**MURDRARE.** L. Lat. In old criminal law. To murder. 3 *Bl. Com.* 321. *Murdravit*; murdered. A necessary word

in old indictments for murder. 4 *Bl. Com.* 307. 5 *Co.* 122 b, *Long's case*. Lord Kenyon, 2 *East*, 30.

To hide, conceal or stifle. *Nullam veritatem celabo, nec celari permittam, vel* *murdrari*; I will conceal no truth, nor will I permit it to be concealed or stifled. *Fleta*, lib. 1, c. 18, § 4. Words of the oath of an inquisitor or juror. And see *Id.* §§ 8, 10.

**MURDRE.** L. Fr. Murder. *LL. Gul. Cong.* l. 26.

A fine so called. *Id. ibid.* See *Murdrum*.

**MURDRITOR.** L. Lat. [from *murdrare*, q. v.] In old English law. A murderer. *Murdritores*; murderers. *Bract.* fol. 115 b.

**MURDRUM.** L. Lat. [L. Fr. *murdre*.] In old criminal law. Murder. *Bract.* fol. 134 b. *Fleta*, lib. 1, c. 30, § 1. A word of art, formerly essential in indictments. 5 *Co.* 121 b, *Long's case*.

A fine or amercement imposed upon a vill, (town,) hundred, or neighborhood (*patria*) where a person was found slain, and not proved to be English, and the slayer was unknown. *Bract.* fol. 134 b, 135. 1 *Hale's P. C.* 425, note. See *Murder*. *Murdra omnia condono*; I forgive or remit all murders. *Chart. Hen. I.* A. D. 1100.

**MURORUM OPERATIO.** Lat. In old English law. Wall-work;\* the service of work and labor done by inhabitants and adjoining tenants, in building or repairing the walls of a city or castle. *Paroch. Ant.* 114. *Cowell.*

**MURTHRUM.** L. Lat. In old Scotch law. Murther or murder. *Skene de Verb. Signif.*

**MUSCE.** L. Fr. Hidden; buried, as treasure. *Britt.* c. 1, 17. *En muscettes*; in secret; privately; clandestinely. *Id.* c. 101.

**MUSTER.** L. Fr. A monastery. *LL. Gul. Cong.* l. 17.

**MUSTER ROLL.** In maritime law. A list or account of a ship's company, required to be kept by the master or other person having care of the ship, containing the names, ages, national character and quality of every person employed in the ship. *Abbott on Ship*. [191, 192.] *Jacobson's Sea Laws*, 161.

**MUTA CANUM.** L. Lat. In old English law. A pack of hounds. *Spelman*. See 2 *St. Trials*, 1164.

**MUTATIO NOMINIS.** Lat. In the civil law. Change of name. *Cod.* 9. 25.

**MUTE.** [from Lat. *mutus*, q. v.] Speechless; dumb; that cannot or will not speak. In English criminal law, a prisoner is said to *stand mute*, when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise; or upon having pleaded not guilty, refuses to put himself upon the country. 4 *Bl. Com.* 324. But see, as to the last case, *Stat.* 7 & 8 *Geo.* IV. c. 28.

**MUTE.** Sc. In old Scotch law. A plea or action, (*placitum*.) The Mute-hill of Scone, (*mons placiti de Scona*.) See *Skene de Verb. Signif.*

**MUTINY.** Open resistance by soldiers or seamen, of their officers, or opposition to their authority. *Webster*.

**MUTINY ACT.** In English law. An act of parliament annually passed to punish mutiny and desertion. 1 *Bl. Com.* 415.

**MUTUAL.** Proceeding from both sides; reciprocal; interchanged.

**MUTUAL CREDITS.** In bankrupt law. Credits which must, from their nature, terminate in debts; as where a debt is due from one party, and credit given by him on the other for a sum of money payable at a future day, and which will then become a debt; or where there is a debt on one side, and a delivery of property with directions to turn it into money on the other. Gibbs, C. J. 8 *Taunt.* 499. 2 *Smith's Lead. Cas.* 179.

**MUTUAL PROMISES.** Promises simultaneously made by and between two parties; each being the consideration for the other.

**MUTUALITY.** Reciprocation; interchange. *Webster*. An acting by both of two parties; an acting in return.

**MUTUARI.** Lat. To borrow. *Mutuat*; a borrowing. 2 *Arch. Pr.* 25.

**MUTUS.** Lat. In civil and old English law. Dumb; mute; a dumb person. *Dig.* 50. 17. 124. *Inst.* 3. 20. 7. *Fleta*, lib. 2, c. 56, § 19. *Mutus et surdus*; dumb and deaf. *Cro. Jac.* 105.

**MUTUUM.** Lat. In the civil law. A loan for consumption. 2 *Kent's Com.* 573.—A loan of consumable goods, called *res fungibiles*, lent on condition of a return in kind. *Hallifax, Anal.* b. 2, c. 15, num. 2. The subjects of this kind of

loan were such articles as might be weighed, counted or measured, (*quæ pondere, numero, mensurave constant*;) as wine, oil, grain, coin, brass, silver or gold, and by the loan the property was transferred, and the value only was to be returned in property of the same kind. *Inst.* 3. 15, pr. *Dig.* 12. 1. 2. *Fleta*, lib. 2, c. 56, § 5. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 15, § 792. *Story on Bailm.* §§ 47, 283.

This loan is said in the Institutes to be called *mutuum*, because *ita à me tibi datur ut ex meo tuum fiat*, (it is given by me to you in such a way, that from mine it becomes yours.) *Inst. ub. sup.*

**MY.** L. Fr. Half; middle. *En my leu*; in the middle place; in the middle. *Britt.* c. 119. *Per my et per tout*; by the half or moiety, and by all. 2 *Bl. Com.* 182.

**MYNUTE.** L. Fr. Midnight. *Britt.* c. 80.

**MYS.** L. Fr. [from *mitter*, to put.] Put; sent; put in or inserted. *Mys à lour penance*; put to their penance. *Britt.* c. 4. *Mys en ferges*; put in irons. *Id.* c. 11. *Poles mys en escritz*; words put in writings. *Id.* c. 39. *Que date soit mys del jour*; that a date be put in of the day. *Id. ibid.* *Mys en la gaole.* *Id.* c. 100. *Mys en certaine*; put in certain. *Dyer*, 55 b.

**MYSTERY.** [L. Lat. *misterium*, from L. Fr. *mestier*, an art or business.] A trade or occupation. *Spelman.* *Cowell*.

**MYSTIC TESTAMENT.** [Fr. *testament mystique ou ferme*.] A sealed testament. *Civ. Code of Louis.* art. 1567. *Cod. Nap.* 969.

## N.

**N.** An abbreviation of *Novellæ*, the Novels of Justinian; used in citing them. *Tayl. Civ. Law*, 24.

**N. L.** An abbreviation of *Non liquet*, (q. v.)

**NAAM.** A taking, or distress. A word used in the Mirror, of the same signification with the L. Fr. *name*, and L. Lat. *namium*, (qq. v.) *Mirr.* lib. 2, c. de Naam. It seems to be neither Saxon nor French, but a compound of both.

**NACION.** L. Fr. Birth; origin. *De vile nacion*; of mean birth. *Britt.* c. 31. *En temps de sa nacion*; at the time of his birth. *Id.* c. 86.

**NADGAIRES, Naidgayers, Naidgaris.**

L. Fr. Lately; not long since; sometimes. *Artic. sup. Chart. c. 17. Kelham.*

NAIF. L. Fr. [L. Lat. *nativus*, a born slave.] A villein; a born slave, (*nee serfe*.) *Britt. c. 31. LL. Gul. Conq. l. 33.*

NAIFTE. L. Fr. [L. Lat. *naivitas*, *nativitas*.] Villeinage; naifty; the state of a person born a slave. *Britt. c. 31.*

NAIVITAS, *Nayvitas*. L. Lat. In old English law. Naifty; villeinage. *Fleta*, lib. 4, c. 2, § 8; c. 11, § 6.

NAM. Lat. For. This particle is frequently used as introductory to the quotation of a maxim, and sometimes erroneously treated as a part of the maxim quoted. 2 *Bl. Com.* 107, 379, 380. 3 *Id.* 188.

NAM. Sax. [from *naman*, to take.] In old English law. The taking of a pledge; a distress. *Spelman*. A component part of the word *withernam*, (q. v.) Hence the more common L. Fr. *name*, and Lat. *namium*, (qq. v.)

NAMARE. L. Lat. [from Sax. *nam*, q. v.] In old records. To take; to distrain; to take a distress. *Spelman. Skene de Verb. Sign.* The derivatives *namptus* and *namptum* were also used.

NAMATIO. L. Lat. [from *namare*, q. v.] In old English and Scotch law. A distraining, or taking of a distress; an impounding. *Spelman*. The English *namation* is given by Cowell and Blount.

NAME. L. Fr. [L. Lat. *namium*; from Sax. *nam*, q. v.] A taking; a distress; a thing or chattel distrained. *Name si est un general nosme à avers et à chateux, et à tous auters choses moebles que len poit prendre en nome de destresse*; *name* is a general word for beasts and chattels and all other moveable things which one may take in name of a distress. *Britt. c. 27. Vee de name, (vetitum namium.) Id. c. 26.*

NAMIUM. L. Lat. [from Sax. *nam*, q. v.] In old English law. A taking; a distress. *Spelman. Fleta*, lib. 2, c. 43, § 3.

Things, goods or animals, taken by way of distress. *Id. Simplex namium*; a simple taking or pledge. *Bract.* fol. 205 b. Called in old Scotch law, *namus*. *Stat. 1 Rob. I. c. 7. See Vetitum namium.*

NARR. In practice. A common abbreviation of *narratio*, (q. v.) The plaintiff's declaration in an action at law. 1 *Inst. Cler.* 11. 1 *Burr. Pr.* 118, 135. 7 *Penn. St. (Barr's) R.* 392.

NARRARE. L. Lat. In old practice.

To relate or narrate; to state a plaintiff's case; to count; to declare. *Narrando*; counting. *Yearb. M. 1 Edw. II. 2.*

NARRATIO. Lat. [from *narrare*, to relate.] In old English practice. A count or declaration. So called as being a *narrative* by the plaintiff, of the facts of the case, as the ground of his action. *Bract.* fol. 283 b, 284. *Fleta*, lib. 6, cc. 16—20. 2 *Reeves' Hist.* 265—267. 3 *Bl. Com.* 293. Anciently delivered *ore tenus*, and called in English the *tale*, which is the literal meaning of the term *count*. *Steph. Pl. Appendix*, Note (56.) The use of *narratio* did not become general until after Bracton, who more commonly employs the term *intentio*. *Bract.* fol. 266 b, 281 b, 296 b, 319 b.

NARRATIVE. In Scotch conveyancing. That part of a deed which describes the grantor, and person in whose favor the deed is granted, and states the cause (consideration) of granting. *Bell's Dict.*

NARRATOR. L. Lat. [from *narrare*, q. v.] In old practice. A countor; an advocate or pleader. *Bract.* 412 a, 372 b. *Steph. Pl.* 24. *Fleta*, lib. 2, c. 37.

NASCITURUS. Lat. [from *nasci*, to be born.] In the civil law. An unborn child; a child to be born, or about to be born. 1 *Mackeld. Civ. Law*, 128, § 118, Kaufmann's note, *ibid.* *Tayl. Civ. Law*, 248.

NASTRE. L. Fr. Born. *Fols nastres*; born fools; idiots from birth. *Britt. c. 34.*

NATI ET NASCITURI. Lat. Born and to be born. An expression including all heirs, near and remote. *Fleta*, lib. 3, c. 8. See *Comb.* 154.

NATIO. Lat. In old records. A native place. *Cowell.*

NATIVA. L. Lat. In old English law. A neife, or female villein. So called, because for the most part bond by nativity. *Co. Litt.* 122 b.

NATIVE. [Lat. *nativus*, born, home born.] In English law. A natural born subject. 1 *Bl. Com.* 366.

In American law. A person born within the jurisdiction of the United States. 2 *Kent's Com.* 38.

NATIVE CITIZEN. A person born in the United States since the declaration of independence, or before, if he has removed here since that event; or the child of a citizen born abroad, if his parents have ever resided here. 2 *Hilliard's Real Prop.* 190, (196, 3d ed.)

**NATIVI.** L. Lat. Vassals or feudal tenants. So called, even before feuds became hereditary. *Wright on Tenures*, 14.

Villeins. *Fleta*, lib. 2, c. 51. See *Nativus*.

**NATIVITAS.** L. Lat. [from *nativus*, q. v.] In old English law. Villeinage; that state in which men were born slaves. 2 *Mon. Angl.* 643. Called by Britton, *naifte*. *Britt.* c. 31. Otherwise written *naivitas*, (q. v.)

**NATIVUS.** L. Lat. [from *nasci*, to be born.] In old English law. A born slave; a villein born; a villein. *Glanv.* lib. 5, c. 1. *Spelman.* *Fleta*, lib. 2, c. 51.

**NATURA.** Lat. Nature. *Natura appetit perfectum; ita et lex.* Nature covets perfection; so does law also. *Hob.* 144.

*Natura non facit saltum; ita nec lex.* Nature makes no leap, [no sudden or irregular movement,] so neither does law. *Co. Litt.* 238. Applied, in old practice, to the regular observance of the degrees in writs of entry, which could not be passed over *per saltum*.

**NATURAL ALLEGIANCE.** In English law. That kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth; which is intrinsic and perpetual, and cannot be divested by any act of their own. 1 *Bl. Com.* 370, 371. 2 *Kent's Com.* 42.

In American law. The allegiance due from citizens of the United States to their native or adopted country, and which, it seems, cannot be renounced without the permission of government, to be declared by law. 2 *Kent's Com.* 43—49.

**NATURAL-BORN SUBJECTS.** In English law. Such persons as are born within the dominions of the crown of England, that is, within the ligeance, or, as it is generally called, the allegiance of the king. 1 *Bl. Com.* 366.

**NATURAL CHILD.** [Gr. *νόθος*.] In the civil law. A child by natural relation or procreation; a child by birth, as distinguished from a child by adoption. *Inst.* 1. 11, pr. *Id.* 3. 1. 2. *Id.* 3. 8, pr.

A child by concubinage, in contradistinction to a child by marriage. *Cod.* 5. 27. See *Nov.* 89. *Tayl. Civ. Law*, 270.

In English and American law. An illegitimate child; a child born out of lawful wedlock. *Cooper's Just. Inst.* \*499. Bracton divides natural children into two kinds, legitimate and illegitimate. *Bract.* fol. 64. And see *Fleta*, lib. 6, c. 1, § 5.

**NATURAL DAY.** That period of time which begins at sunrise and ends at sunset; otherwise called a solar day. See *Day*. This seems to be sometimes confounded with an artificial day. *Dyer*, 131 a.

**NATURAL FOOL.** A person born without understanding; a born fool or idiot. Sometimes called, in the old books, a *natural*. See *Idiot*.

**NATURAL FRUITS.** [Lat. *fructus naturales*.] Fruits of land or other thing, produced solely by the powers of nature. See *Fructus naturales*.

**NATURAL LAW.** [Lat. *jus naturale*, *jus naturæ*.] The rule and dictate of right reason, showing the moral deformity or moral necessity there is in any act, according to its suitableness or unsuitableness to a reasonable nature. *Tayl. Civ. Law*, 99. See *Law of nature*.

**NATURAL LIBERTY.** The power of acting as one thinks fit, without any restraint or control, unless by the law of nature. 1 *Bl. Com.* 125.

**NATURAL PRESUMPTION.** In the law of evidence. That species of presumption, or process of probable reasoning, which is exercised by persons of ordinary intelligence, in inferring one fact from another, without reference to any technical rules. Otherwise called *præsumptio hominis*. *Burr. Circ. Ev.* 11, 12, 22, 24.

Presumption as applied to subjects not of a legal character, as distinguished from judicial presumption. *Id.* 11. See *Presumption*.

A presumption of fact. *Id.* 59.

**NATURAL YEAR.** [Lat. *annus naturalis*.] In old English law. That period of time in which the sun was supposed to revolve in its orbit, (*spatium quo suum sol pervolvat circum;*) consisting of 365 days and one-fourth of a day, or six hours. *Bract.* fol. 359 b.

**NATURALEZA.** Span. In Spanish law. The state of a natural born subject. *White's New Recop.* b. 1, tit. 5, c. 2. Called *naturalidad*. *Id.* § 1.

**NATURALIZATION.** [Lat. *naturalizatio*.] The act of investing an alien with the rights and privileges of a native or natural-born subject or citizen.\* *Co. Litt.* 129 a. 1 *Bl. Com.* 374. 2 *Kent's Com.* 64—67. See the Acts of Congress of April 14th, 1802, ch. 28; March 3d, 1813, ch. 184; March 22d, 1816, ch. 32;

May 26th, 1824, ch. 186; and May 24th, 1828, ch. 116.

**NATURALIZED CITIZENS.** In American law. Those who go through the prescribed process for naturalization; their minor children at that time in the country; or the widows and children of those who have taken the initiatory steps for naturalization, but have died before they were actually naturalized. 2 *Hilliard's Real Prop.* 190.

**NAUCLERUS.** Græco-Lat. [Gr. ναῦ-κληρος, from ναῦς, a ship, and κληρος, lot.] In the civil law. The master or proprietor of a trading vessel. *Cod.* 11. 1. [2.] *Calv. Lex. Adam's Rom. Ant.* 440. *Molloy de Jur. Mar.* 243. 2 *Peters' Adm. Dec.* Appendix, lxxxiii.

**NAUFRAGE.** Fr. [Lat. *naufragium*, q. v.] In French law. Shipwreck, (*navis fractura*.) *Emerigon Tr. des Ass.* ch. 12, sect. 12, § 1.

**NAUFRAGIUM.** Lat. [from *navis*, a ship, and *frangere*, to break; L. Fr. *naufnage*.] In the civil law. Shipwreck; the breaking of a ship (*navis fractio*;) q. d. ship-break. *Dig.* 47. 9. *Cod.* 11. 5. *Calv. Lex. Loccen. de Jur. Mar.* lib. 1, c. 7. "A ship was broken at sea." *Hale de Jur. Mar.* pars 1, c. 7.

**NAUGHT.** In old practice. Bad; defective. "The bar is *naught*." 1 *Leon.* 77. "The avowry is *naught*." 5 *Mod.* 73. "The plea is undoubtedly *naught*." *Eyre*, C. J. 10 *Id.* 329. See 11 *Id.* 179. Sometimes written "naughty." *Brownl. & Golds.* 97. See *III.*

**NAULUM.** Græco-Lat. [Gr. ναῦλον, from ναῦς, a ship.] In civil and maritime law. Freight; a sum paid for carrying goods or passengers over sea in a ship.\* The consideration or premium promised to the master of a ship for carrying goods or persons from one place to another. *Roccus Notab. de Nav. et Naulo*, Not. ii. See *Freight*.

**NAUPEGUS.** Græco-Lat. [Gr. ναυπηγός, from ναῦς, a ship, and πηγνυμι, to fit together.] In the civil law. A shipwright, or ship carpenter. *Dig.* 50. 6. 6. *Calv. Lex. Molloy de Jur. Mar.* 243. 2 *Peters' Adm. Dec.* Appendix, lxxxiii.

**NAUTA.** Lat. [from Gr. ναῦς, a ship.] In the civil and maritime law. A sailor; one who works a ship. *Calv. Lex.*

Any one who is on board a ship for the purpose of navigating her, (*omnes qui navis navigandæ causâ, in nave sunt.*) *Dig.*

4. 9. 1. 2. *Roccus de Nav. & Naulo*, not. 9. 3 *Sumner's R.* 213.

The employer of a ship, (*qui navem exercet.*) *Dig.* 4. 9. 1. 2. *Story on Agency*, § 317, note.

**NAVARCHIUS.** Græco-Lat. [Gr. ναύαρχος, from ναῦς, a ship, and ἀρχή, command.] In civil law. The master or commander of a ship; the captain of a man-of-war. *Cod.* 11. 1. 6. *Adam's Rom. Ant.* 440. *Calv. Lex.* 2 *Peters' Adm. Dec.* Appendix, lxxxiii.

**NAVICULARIUS.** Lat. [from *navis*, ship.] In the civil law. The master or captain of a ship. *Calv. Lex. Molloy de Jur. Mar.* 243. 2 *Peters' Adm. Dec.* 307, note. *Id.* Appendix, lxxxiii. See *Emerig. Tr. des Ass.* ch. 14, sect. 1.

**NAVIGABLE.** [Lat. *navigabilis*, from *navigare*, to sail, from *navis*, a ship.] That may be navigated or passed over in ships or vessels. But the term is also understood in a more restricted sense. See *Navigable river*.

That may be used for navigation. Said of a ship. See *Innavigable*.

**NAVIGABLE RIVER or STREAM.** A river or stream in which the tide ebbs and flows, or as far as the tide ebbs and flows. This is the common law definition of the term. The flux and reflux of the tide is the common law test of a navigable stream. And, by that law, fresh-water rivers do not come within the category of navigable rivers. *Grier J.* 20 *Howard's R.* 194. See *Id.* 299. 12 *Id.* 444. This doctrine has been adopted in several of the United States, as in New-York, Massachusetts, New-Hampshire, Connecticut, Maine, Maryland, Virginia, Ohio and Indiana. See *Angell on Water-Courses*, §§ 546, 547. In other states, as in Pennsylvania, North and South Carolina, Tennessee, Alabama and Mississippi, it has been rejected, and large public rivers used for navigation, whether tide-waters or not, are considered as coming under the denomination of *navigable*. 12 *Howard's R.* 444. 20 *Id.* 299. 14 *Id.* 91. 2 *Binney's R.* 475. 2 *Devereux R.* 30. 1 *McCord's R.* 580. 6 *Humphrey's R.* 358. 2 *Swan's R.* 9. 2 *Porter's R.* 436. 29 *Mississippi R.* 31, 34. *Angell on Water-Courses*, §§ 548, 549. This is in accordance with the civil law, in which, a navigable river is a river capable of being *navigated*, in the common sense of the term, and not merely a river in which the tide flows and reflows.

*Id.* § 550. See 3 *Kent's Com.* 412—418. 2 *Hilliard's Real Prop.* 90, 91.

Navigable streams are highways. *Gordon's Dig.* 318. See *Angell on Water-Courses*, §§ 545, 546. And a stream not navigable by boats, but floatable merely, is a public highway. 2 *Michigan (Gibbs) R.* 519, 525, 527.

NAVIGARE. Lat. [from *navis*, a ship, and *agere*, to move or work.] To navigate; to work or manage a ship; to perform a voyage; to sail.

NAVIGATION. [Lat. *navigatio*, from *navigare*, q. v.] The act of navigating or passing on water, in ships or other vessels. *Webster*.

The management of ships or vessels. 3 *Kent's Com.* 159.

Commerce or intercourse by means of shipping.\* *Marshall, C. J. 9 Wheaton's R.* 189—196. See the Passenger cases in 7 *Howard's R.* 283, *et seq.*

NAVIGATION ACT. In English law. The celebrated statute of 12 Car. II. c. 18. 2 *Bl. Com.* 419. Repealed by the statute 6 Geo. IV. cc. 109, 110, 114. 3 *Steph. Com.* 272, 273.

NAVIL, *Navyl.* L. Fr. No; not. *Yearb.* P. 5 Edw. III. 5. P. 7 Edw. III. 10. T. 5 Edw. III. 34, 36.

NAVIRE. Fr. In French law. A ship. *Emerig. Tr. des Ass.* ch. 6, § 1.

NAVIS. Lat. [Gr. *ναῦς*.] A ship; a vessel. *Dig.* 21. 2. 44. *Id.* 47. 9.

NAVIS BONA. Lat. A good ship; one that was staunch and strong, well caulked, and stiffened to bear the sea, obedient to her helm, swift, and not unduly affected by the wind. *Calv. Lex.* citing *Seneca*, lib. 5, ep. 77. So, in modern bills of lading and other mercantile papers, a vessel is frequently termed "the good ship."

NE. L. Lat. and Fr. Not. See *infra*. The Lat. *ne* was used to express a negative condition. *Fleta*, lib. 4, c. 16, § 6.

NE ADMITTAS. L. Lat. (That you admit not.) In English practice. A writ which lies for the plaintiff in a *quare impedit*, where he suspects that the bishop will admit the defendant's or any other clerk, pending the suit; forbidding the bishop to admit any clerk whatever till such contention be determined. So called from the initial words in the Latin forms: *Prohibemus vobis ne admittatis personam*, &c. *Reg. Orig.* 31. *F. N. B.* 37, *F. G.* 3 *Bl. Com.* 248. Mr. Serjeant Stephen

supposes this writ to be now superseded. 3 *Steph. Com.* 661, note (q.)

NE BAILA (BAILLA) PAS. L. Fr. (Did not deliver.) In old English practice. A plea in the action of detinue, denying the delivery of the thing sued for. *Crabb's Hist.* 424. *Yearb.* H. 6 Edw. II. 192.

NE DISTURBA PAS. L. Fr. (Does or did not disturb.) In English practice. The general issue or general plea in *quare impedit*. 3 *Steph. Com.* 663. *Steph. Pl.* 156, 158. 3 *Wooddes. Lect.* 9.

NE DONA PAS. L. Fr. (Did not give.) In old English practice. The general issue or general plea, in the writ of formedon. *Crabb's Hist.* 423. *Yearb.* M. 3 Edw. III. 29. P. 9 Edw. III. 26.

NE EXEAT REGNO, (that he go not out of the kingdom,) commonly called NE EXEAT. L. Lat. In equity practice. A writ issuing out of chancery, forbidding the person or persons to whom it is directed from leaving the kingdom or state. It was formerly used in England for state purposes, but has now become a mere process between private parties in an equity suit, and is used where one party wishes to prevent the other from withdrawing his person or property from the jurisdiction of the court, by going abroad. 2 *Steph. Com.* 524, note. 3 *Daniell's Chanc. Pr.* (Perkins' ed.) 1925. 2 *Story's Eq. Jur.* § 1464, *et seq.* See the original forms, *Reg. Brev.* Appendix, 54, 55.

NE GIST PAS EN BOUCHE. L. Fr. It does not lie in the mouth. A common phrase in the old books. *Yearb.* M. 3 Edw. II. 50.

NE INJUSTE VEXES. L. Lat. (That you do not unjustly vex.) In old English practice. A prohibitory writ, (now abolished,) founded on the tenth chapter of Magna Charta, which lay for a tenant distrained by his lord for more services than he ought to perform, commanding the lord that he do not distrain his tenant to do other services than those which of right he ought to do, or, in the words of the writ, *prohibiting* him from *vexing* the tenant concerning his freehold, &c. (*Prohibemus tibi ne injuste vexes, vel vexari permittas W. de libero tenemento*, &c.) *Reg. Orig.* 4. *F. N. B.* 10, C. F. 3 *Bl. Com.* 234.

NE QUID IN LOCO PUBLICO VEL ITINERE FIAT. Lat. That nothing shall be done, (put or erected) in a public

place or way. The title of an interdict in the Roman law. *Dig.* 43. 8.

**NE RECIPIATUR.** L. Lat. (That it be not received.) In practice. A proceeding by which a party to an action at law may prevent the other from doing some act, such as filing a writ or record, when it has not been done in due time. See 1 *Stra.* 63. *Bohun's Inst. Legalis*, 39, 200. In American practice, it has sometimes been adopted by a defendant, to prevent the filing of the plaintiff's trial record. 1 *Burr. Pr.* 232.

**NE UNQUES ACCOUPLE EN LOI-ALL MATRIMONIE.** L. Fr. (Never accoupled in lawful matrimony—never lawfully married.) In pleading. A plea by which the tenant in an action of dower, *unde nil habet*, might controvert the validity of the demandant's marriage with the person out of whose lands she claimed dower. *Roscoe's Real Act.* 220. So called from the words constituting the substance of the plea, when orally delivered in French. See *Britt.* c. 107. It seems to have at one time been called the plea or exception of *concubinage*. *Id. ibid.* Still used in some of the United States, as on petitions for the allotment of dower. 4 *Florida R.* 23.

**NE UNQUES EXECUTOR (or ADMINISTRATOR.)** L. Fr. (Never executor or administrator.) In pleading. A plea by which the defendant denies being an executor or administrator. 2 *Williams on Exec.* 1654. 2 *Greenl. Ev.* § 344.

**NE UNQUES RECEIVOIR.** L. Fr. (Never receiver.) In pleading. The general plea in actions of account, denying the fact of the defendant's being a receiver. 2 *Reeves' Hist.* 339. *Crabb's Hist.* 424.

**NE UNQUES SEISE QUE DOWER.** L. Fr. (Never seised of a dowable estate.) In pleading. The general issue in the action of dower *unde nil habet*, by which the tenant denies that the demandant's husband was ever seised of an estate of which dower might be had. *Roscoe's Real Act.* 219, 220.

**NE VARIETUR.** L. Lat. (That it be not changed, or let it not be changed.) A notarial phrase, the words of which are sometimes written by notaries upon bills and notes, for the purpose of ascertaining their identity; but held to be no restriction upon their negotiability. 8 *Wheaton's R.* 338.

"NEAR," in a penal law, construed strictly, yet not equivalent to *next*. 1 *W. Bl.* 20. "There must be a reasonable vicinity, of which the court will judge." *Id. ibid.*

**NECE.** L. Fr. A granddaughter. *Britt.* c. 119. See *Neveu*.

**NECESSARIES.** In the law of infancy. Such things and articles furnished to an infant as are useful and suitable to his state and condition in life, and not merely such as are requisite for bare subsistence. 6 *Mees. & W.* 42. 1 *Man. & Gr.* 550. 5 *Ad. & Ell.* 606. See *Macpherson on Infants*, 498—510. *Smith on Contracts*, 201, 205, and notes. 2 *Greenl. Evid.* § 365. The question what is, in the legal sense of the word, *necessary*, is, in each case, to be tried by a jury. *Smith on Contracts, ub. sup.*

**NECESSARIUS.** Lat. Necessary; unavoidable; indispensable; not admitting of choice or the action of the will; needful. See *Necessary*.

**NECESSARY.** [from Lat. *necessarius*.] That must be; that cannot be otherwise; indispensably requisite. *Webster*.

In a less strict sense,—needful; requisite; incidental; useful or conducive to. *Mr. Hamilton's Argument on the Constitutionality of a National Bank*. "It is a common mode of expression to say that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interest of the government or person requires, or will be promoted by the doing of this or that thing." *Id. ibid.* The word "necessary" does not always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other. It frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means *necessary* to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable. *Marshall, C. J.* 4 *Wheaton's R.* 316, 413. See 1 *Kent's Com.* 253, 254, note. "Necessary" is an adjective possessing degrees, and does not mean indispensable. *Dupont, J.* 6 *Florida R.* 29. And see 24 *Connecticut R.* 338.

**NECESSARY DOMICIL.** That kind of domicile which exists by operation of

law, as distinguished from voluntary domicile or domicile of choice. *Phillimore on Domicil*, 27—97.

**NECESSARY INTROMISSION.** *Intromission* Scotch law. That kind of intromission or interference where a husband or wife continues in possession of the other's goods after their decease, for preservation. *Wharton's Lex.*

**NECESSITAS.** *Lat.* Necessity; a force, power or influence which compels one to act against his will. *Calv. Lex. Brissonius.*

*Necessitas culpabilis*; culpable or blamable necessity. That kind of necessity which excuses a man who kills another *se defendendo*. So called by Lord Bacon, to distinguish it from the necessity of killing a thief or malefactor. *Bacon's Elem.* c. 5. 4 *Bl. Com.* 187.

*Necessitas est lex temporis et loci.* Necessity is the law of time and of place. 1 *Hale's P. C.* 54.

*Necessitas facit licitum quod alias non est licitum.* Necessity makes that lawful which otherwise is not lawful. 10 *Co.* 61 a. See *Quod alias non fuit*, &c.

*Necessitas inducit privilegium quoad jura privata.* Necessity carries with it a privilege as to private rights. *Bacon's Max.* 28, reg. 5. "The law chargeth no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and, therefore, if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as, in presumption of law, man's nature cannot overcome, such necessity carrieth a privilege in itself." *Id. ibid.* *Broom's Max.* 6—11, [8, 14.] But it is to be noted that necessity privileges only *quoad jura privata*; for in all cases, if the act that should deliver a man out of the necessity be against the *commonwealth*, necessity excuses not. *Bac. Max.* 32.

*Necessitas inducit privilegium quod jure privatur.* 10 *Co.* 61 a, *The Bishop of Salisbury's case*. This seems to be a misstatement of the preceding maxim, Lord Bacon being referred to as the authority.

*Necessitas non habet legem.* Necessity has no law. *Plowd.* 18 a. "A common proverb." *Id. ibid.* "Necessity shall be a good excuse in our law, and in every other law." *Id.*

*Necessitas publica major est quam privata.* Public necessity is greater than private.

*Bacon's Max.* 37, in reg. 5. "Death," observes Lord Bacon, in illustration of this maxim, "is the last and farthest point of particular necessity, and the law imposeth it upon every subject, that he prefer the urgent service of his prince and country before the safety of his life."

*Necessitas quod cogit, defendit.* Necessity defends or justifies what it compels. 1 *Hale's P. C.* 54. Applied to the acts of a sheriff, or ministerial officer, in the execution of his office. *Broom's Max.* 7, 8, [10.] See *Quod necessitas cogit*, &c.

*Necessitas sub lege non continetur.* Necessity is not embraced under any law. 2 *Inst.* 326. See *Fleta*, lib. 5, c. 23, § 14.

*Necessitas vincit (commune) legem.* Necessity overcomes the [common] law. 5 *Co.* 40 b, *Dormer's case*.

**NECESSITUDO.** *Lat.* In the civil law. An obligation; a close connexion; relationship by blood. *Calv. Lex.*

**NECESSITY.** [*Lat. necessitas.*] Irresistible power; compulsive force, physical or moral. *Webster.*—The influence or operation of superior power or irresistible force; the influence of a cause which cannot be avoided nor controlled.\*—A constraint upon the will, whereby a man is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject. It is highly just and equitable, therefore, that a man should be excused for those acts which are done through unavoidable force and compulsion. 4 *Bl. Com.* 27.

**NECK-VERSE.** A cant term for the verse which the ordinary gave a malefactor who prayed his clergy, to read; and by reading which he escaped hanging. *Foster's Crown Law*, 206, c. 7. See *Miscere, Clergy*.

"Letter nor line know I never a one,  
Were't my neck-verse at Hairibee."  
*Scott's Lay of the Last Minstrel*, canto i.

**NEE, Ne.** *L. Fr.* [from *Lat. natus.*] Born. *Si il fuit nee en vie*; if it was born alive. *Britt.* c. 51. *Nee vife*; born alive. *Litt.* sect. 35.

**NEF, Noef, Nief.** *L. Fr.* New. *Kelham.*

**NEFAS.** *Lat.* That which is against right, or the divine law, (*fas.*) See *Fas.*

A wicked or impious thing or act. *Calv. Lex.*

**NEFASTUS.** *Lat.* [from *ne*, not, and *fastus*, q. v.] In Roman law. A term applied to a day on which it was unlawful

to administer justice. *Adam's Rom. Ant.* 129, 200.

NEFE, *Neef*, *Næf*. L. Fr. [from Lat. *navis*.] A ship. *Nefe siglaunt*; a vessel sailing. *Britt. c. 1.* *Neis*; ships. *Kelham*.

NEGARE. Lat. To deny. *Calv. Lex.* See *Factum negantis*, &c.

NEGATIF, *Negatyf*. L. Fr. A negative or denial; a contrary or opposite allegation. *Prover le negatyf. Britt. c. 98.*

NEGATIO. Lat. [from *negare*, q. v.] In civil and old English law. A negation, or denial; a negative. *Negatio conclusionis est error in lege.* The denial of a conclusion is error in law. *Wingate's Max.* 268, max. 77. Applied to a conclusion in its logical sense, as drawn from premises.

*Negatio destruit negationem, et umbæ faciunt affirmationem.* A negative destroys a negative, and both make an affirmative. *Co. Litt.* 146 b. Lord Coke cites this as a rule of grammatical construction, not always applying in law. *Id. ibid.*

NEGATIVE. A denial; a form or expression of denial; a proposition by which something is denied; a statement in the form or mode of denial. Two negatives do not make a good issue. *Steph. Pl.* 386, 387.

NEGATIVE PREGNANT. In pleading. A negative implying also an affirmative. *Cowell*.—Such a form of negative expression as may imply or carry within it an affirmative. *Steph. Pl.* 381. As if a man be said to have aliened land *in fee*, and he says *he has not aliened in fee*, this is a negative pregnant, for though it be true that he has not aliened in fee, yet it may be that he has made an estate *in tail*. *Cowell. Dyer*, 17 a.

A *negative pregnant* is considered as a fault in pleading; and the reason why it is so considered is, that the meaning of such a form of expression is ambiguous. Mr. Stephen gives the following example: "In trespass for entering the plaintiff's house, the defendant pleaded that the plaintiff's daughter gave him license to do so, and that he entered by that license. The plaintiff replied that *he did not enter by her license*. This was considered as a *negative pregnant*; and it was held that the plaintiff should have traversed the entry by itself, or the license by itself, and not both together. *Cro. Jac.* 87. It will be observed that this traverse might imply or carry within it, that a license was given, though

the defendant did not enter by that license. It is, therefore, in the language of pleading, said to be *pregnant* with that admission, viz. that a license was given." *Steph. Pl.* 381.

NEGATIVE STATUTE. A statute expressed in negative terms; a statute which prohibits a thing from being done, or declares what shall *not* be done. See 1 *Bl. Com.* 142.

NEGATUM. Lat. [from *negare*, q. v.] Denied; the opposite of *concessum*, (q. v.) "Held by Dodridge, J. *et non fuit negatum*, that," &c. *Latch*, 149.

NEGLECT is used, in the law of bailment, as synonymous with *negligence*, (q. v.) *Jones on Bailm.* 9, 21, 118. But the latter word is the closer translation of the Lat. *negligentia*, (q. v.)

NEGLIGENCE. [from Lat. *negligentia*, q. v.] The omission of care or diligence.\*—The want of ordinary diligence. *Story on Bailm.* § 17.—The omission of that degree of care which a man of common prudence takes of his own concerns. 2 *Steph. Com.* 131. This, according to Mr. Stephen, answers to what Sir William Jones calls *ordinary neglect*. *Id. ibid.* note. *Jones on Bailm.* 118, 119. But see *Negligentia*.

Negligence is commonly distinguished as of three degrees,—*slight*, *ordinary* and *gross*. But doubts have been expressed as to the practical utility of this division. See the opinion of Mr. Justice Curtis, 16 *Howard's R.* 469, 474.

NEGLIGENTIA. Lat. [from *negligere*, to neglect.] In the civil law. Negligence, want or omission of care or attention; inattention. This term hardly seems to correspond with what is called in English simple *negligence*, since it took a high degree of it to constitute *culpa*, or fault. *Magna negligentia culpa est. Dig.* 50. 16. 226. See *Culpa*.

*Negligentia semper habet infortunium comitem.* Negligence always has misfortune for a companion. *Co. Litt.* 246 b. *Shep. Touch.* 476.

NEGLIGENT ESCAPE. In practice. An escape from an officer's custody without his consent. 1 *Arch. Pr.* 85. An escape through negligence or inattention.

NEGOTIABILITY. In mercantile law. Transferable quality. That quality of bills of exchange and promissory notes, which renders them transferable from one person to another; and from possessing which, they are emphatically termed *negotiable*

*paper.* 3 *Kent's Com.* 74, 77, 89, *et seq.* See *Story on Bills*, § 60.

**NEGOTIABLE.** In mercantile law. Transferable or assignable; transferable by endorsement; that may be negotiated or transferred from one to another, so as to pass a right of action. A term constantly applied to bills of exchange, promissory notes, and checks, which are made negotiable by being made payable *to order* or *to bearer*. See *Negotiable instrument*, *Negotiable words*.

**NEGOTIABLE INSTRUMENT.** Any instrument, the right of action on which is, (by exception from the common rule,) freely assignable from man to man. 2 *Steph. Com.* 163. But see *Story on Bills*, § 62.

**NEGOTIABLE WORDS.** In mercantile law. Words necessary to render a bill of exchange, promissory note or check, negotiable; words which give a bill, note or check a negotiable quality. The usual word for this purpose in a bill or note, is "*order*;" and in a check, "*bearer*;" as "to A. B. or *order*;" or, "to the *order* of A. B.;" "to A. B. or *bearer*;" or, "to *bearer*." 3 *Kent's Com.* 77. *Story on Bills*, § 60. See 3 *Comstock's R.* 506.

**NEGOTIARI.** Lat. [from *negotium*, business.] To do or transact business; to trade or traffic; to negotiate.

**NEGOTIATE.** [from Lat. *negotari*, q. v.] To pass from one to another in the way of business, (*negotium*.) To *negotiate* a bill or note, is to indorse and deliver it to another.

**NEGOTIORUM GESTIO.** Lat. In the civil law. Literally, a doing of business or businesses. A species of spontaneous agency, or an interference by one in the affairs of another, in his absence, from benevolence or friendship, and without authority. 2 *Kent's Com.* 616, note. *Inst.* 3. 28. 1. *Dig.* 3. 5. *Heinecc. Elem. Jur. Civ. lib.* 3, tit. 28, § 969. The intervention of a person, acting without authority in transacting the affairs of another. 2 *Duer on Ins.* 133.

**NEGOTIORUM GESTOR.** Lat. In the civil law. A manager of business. A name given to one who assumed the care of the affairs of another in his absence, without authority or mandate, (*qui negotia absentis gessit—sine mandato alienis negotiis gerendis se obtulit.*) *Inst.* 3. 28. 1.—A voluntary agent. 2 *Duer on Ins.* 134.—One who spontaneously, and with-

out the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, &c. *Story on Bailm.* § 189.

**NEGOTIUM.** Lat. A thing; a matter, business or affair; any thing that may occupy a person, (*illud quod nos habet occupatos.*) *Calv. Lex.*

Business; trade, (*mercatura.*) *Id.*

In the civil law. A suit; a contract. *Id.*

*Negotia*, (plur.) matters or affairs. See *Negotiorum gestio*.

**NEIFE, Neif.** [L. Lat. *nativa*.] In old English law. A female villein; a woman born in villeinage. 2 *Bl. Com.* 94. *Perkins*, ch. 5, s. 314. This is the proper form of the word, though it is also written *niefe* by Coke and others. See *Niefe*. *Neife de eu et trene*; a neife of water, and whip of three cords; such a bondwoman as was used to servile works and correction. *Co. Litt.* 25 b. See *De eu et trene*.

**NEIFTY.** In old English law. The condition of a neife. Derived probably from the Fr. *naifte*, (q. v.)

**NEIPCE.** Sc. In old Scotch law. A granddaughter. *Skene de Verb. Sign. voc. Eneya*.

**NEMBDA.** Teut. In Swedish and Gothic law. A jury. 3 *Bl. Com.* 349, 359. *Barringt. Obs. Stat.* 18, note [z.]

**Neminem oportet esse sapientiores legibus.** No man ought to be wiser than the laws. *Co. Litt.* 97 b. No man (out of his own private reason,) ought to be wiser than the law, which is the perfection of reason. *Id. ibid.*

**Nemo admittendus est inhabilitare seipsum.** No man is to be admitted to incapacitate himself. *Jenk. Cent.* 40, case 77. No man shall be received to avoid his deed, by alleging that he was *non compos mentis* at the making of it. *Id. ibid.* *Yearb.* M. 5 Edw. III. 131. See 2 *Kent's Com.* 451, and note.

**Nemo agit in seipsum.** No man acts against himself. *Jenk. Cent.* 40, case 76. A man cannot be a judge and a party in his own cause. *Id. ibid.* No man can do an act to himself. *Finch's Law*, b. 1, ch. 3, n. 20.

**Nemo alienæ rei, sine satisfactione, defensor idoneus intelligitur.** No man is considered a competent defender of another's property, without security. A rule of the Roman law, applied in part in admiralty cases. 1 *Curtis' R.* 202.

**Nemo alieno nomine lege agere potest.** No

man can sue in another's name. A maxim of the civil law. *Dig.* 50. 17. 123.

**Nemo allegans suam turpitudinem est audiendus.** No one alleging his own baseness or infamy is to be heard (as a witness:) no person is allowed to give evidence of his own baseness or wickedness. 4 *Inst.* 279. This maxim (which is derived from the civil law,) is quoted in several of the old English cases, and has been recognised in American law. *Gibson, C. J. 6 Penn. St. (Barr's) R.* 473, 474. *Story J. 3 Story's R.* 516, 514. But Mr. Best, after an examination of the modern authorities, comes to the conclusion that in England it forms no part of the common law of the present day. *Best on Evid.* 412—416, § 373, 374.

**Nemo bis punitur pro eodem delicto.** No man is punished twice for the same offence. 4 *Bl. Com.* 315. 2 *Hawk. P. C.* 377.

**Nemo cogitur rem suam vendere, etiam justo pretio.** No man is compelled to sell his own property, even for a just price. 4 *Inst.* 275. Applied to things saleable in markets.

**Nemo contra factum suum venire potest.** No man can contravene or contradict his own deed. 2 *Inst.* 66. The principle of estoppel by deed. *Best on Evid.* 408, § 370.

**Nemo dare potest quod non habet.** No man can give that which he has not. *Fleta*, lib. 3, c. 15, § 8. 2 *And.* 92. **Nemo dat qui non habet.** *Jenk. Cent.* 250.

**Nemo de domo sua extrahi debet.** No man ought to be dragged from his own house. *Dig.* 50. 17. 103.

**Nemo debet bis puniri pro uno delicto.** No man ought to be punished twice for one offence. 4 *Co.* 43 a. 11 *Co.* 59 b, *Foster's case*. No man shall be placed in peril of legal penalties more than once upon the same accusation. *Broom's Max.* 138, [257.]

**Nemo debet bis vexari [si constet curiæ quod sit] pro una et eadem causa.** No man ought to be twice troubled or harassed [if it appear to the court that it is] for one and the same cause. 5 *Co.* 61 a, *Sperry's case*. No man can be sued a second time for the same cause of action, if once judgment has been rendered. See *Broom's Max.* 135, [241.] No man can be held to bail a second time at the suit of the same plaintiff, for the same cause of action. 1 *Chitt. Arch. Pr.* 476. No man who has once been indicted for an offence and ac-

quitted, can be afterwards indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment. *Broom's Max.* 137, [257.]

**Nemo debet [potest] esse iudex in propria causa.** No man ought to [can] be a judge in his own cause. 12 *Co.* 114 a, *Earl of Derby's case*. A maxim derived from the civil law. *Cod.* 3. 5. Called a fundamental rule of reason and of natural justice. *Burr. Sett. Cas.* 194, 197.

**Nemo debet immiscere se rei ad se nihil pertinenti.** No one should intermeddle with a thing that in no respect concerns him. *Jenk. Cent.* 18, case 32.

**Nemo debet locupletari aliena jactura.** No one ought to be enriched by another's loss. 2 *Kent's Com.* 336. 1 *Kames' Equity*, 331. 2 *Id.* 145, 204, 205. Other forms of this maxim are, **Nemo debet locupletari ex alterius incommodo.** *Jenk. Cent.* 4, case 5. **Nemo ex alterius detrimento fieri debet locupletior.** 1 *Story's Eq. Jur.* § 558. **Jure naturæ æquum est neminem cum alterius detrimento et injuria fieri locupletiorum.** *Dig.* 50. 17. 206. *Id.* 12. 6. 14.

**Nemo debet rem suam sine facto aut defectu suo amittere.** No man ought to lose his property without his own act or default. *Co. Litt.* 263 a.

**Nemo duobus utatur officiis.** No man should enjoy two offices (at the same time.) 4 *Inst.* 100. A justice can take no other office. *Id. ibid.*

**Nemo est hæres viventis.** No one is the heir of a living person. *Co. Litt.* 8 a, 22 b. No one can be heir during the life of his ancestor. *Broom's Max.* 223, [393.] No person can be the actual complete heir of another, till the ancestor is previously dead. 2 *Bl. Com.* 208. *Id.* 107, 170, 224. 4 *Kent's Com.* 212. 2 *Hilliard's Real Prop.* 540.

**Nemo ex alterius facto prægravari debet.** No man ought to be burdened in consequence of another's act. 2 *Kent's Com.* 646.

**Nemo ex consilio obligatur.** No man is bound in consequence of his advice. Mere advice will not create the obligation of a mandate. *Story on Bailm.* § 155.

**Nemo ex proprio dolo consequitur actionem.** No man acquires a right of action from his own wrong. *Broom's Max.* [221.]

**Nemo ex suo delicto meliorem suam condi-**

**tionem facere potest.** No man can improve his own condition by his own wrong. *Dig.* 50. 17. 134. 1.

**Nemo inauditus condemnari debet si non sit contumax.** No man ought to be condemned without being heard, unless he be contumacious. *Jenk. Cent.* 18, case 12, *in marg.*

**Nemo in propria causa testis esse debet.** No one ought to be a witness in his own cause. 3 *Bl. Com.* 371. 1 *Id.* 443. This maxim has been greatly impaired in modern law, by judicial decisions and statutory provisions, both in England and the United States. See Lord Denman's Act, 6 & 7 *Vict.* c. 85. *Best on Evid.* 159, § 125, *et seq.* 1 *Greenl. Ev.* § 329, *et seq.* *Id.* §§ 383—386, *et seq.* 1 *Phill. on Ev.* 45, 60. 3 *Id.* Cowen and Hill's notes, 44—60. (Notes 34—37.) 24 *Mississippi R.* 528, 538, and cases cited *ibid.*

**Nemo militans Deo implicetur secularibus negotiis.** No man who is warring for [in the service of] God should be involved in secular matters. *Co. Litt.* 70 b. A principle of the old law, that men of religion were not bound to go in person with the king to war.

**Nemo patriam in qua natus est exuere, nec ligeantiæ debitum ejurare possit.** No man can renounce the country in which he was born, nor abjure the obligation of his allegiance. *Co. Litt.* 129 a. *Broom's Max.* [52.] More briefly expressed, **Nemo potest exuere patriam.** *Fost. Cr. Law*, 184. See *Natural allegiance.*

**Nemo plus commodi heredi suo relinquit quam ipse habuit.** No one leaves a greater benefit to his heir than he had himself. *Dig.* 50. 17. 120.

**Nemo plus juris ad [in] alium transferre potest quam ipse habet. [haberet.]** No one can transfer more right to another than he has himself. *Dig.* 50. 17. 54. See *Id.* 50. 17. 175. 1. This maxim of the civil law has been adopted in the common law, and constitutes a leading principle of the alienation of property, both real and personal. 1 *Wooddes. Lect.* Introd. Lect. 5, lxxi. note. 5 *Co.* 113. *Co. Litt.* 309 b. *Wingate's Max.* 56. *Broom's Max.* [354.] 2 *Ken's Com.* 324. 4 *Id.* 10. *Story on Bailm.* §§ 328, 340. Called by Mr. Justice Thompson, "a plain dictate of common sense." 10 *Peters' R.* 161, 175. Otherwise expressed, **Nemo potest plus juris ad alium transferre quam ipse habet.** *Co. Litt.* 309 b.

**Nemo potest contra recordum verificare per patriam.** No one can verify by the country, against a record. 2 *Inst.* 380. The issue upon matter of record cannot be to the country. A maxim of old practice.

**Nemo potest esse dominus et hæres.** No man can be both owner and heir. *Hale's Hist. Com. Law*, c. 7. **Nemo ejusdem tenementi simul potest esse hæres et dominus.** 1 *Reeves' Hist. Eng. Law*, 106.

**Nemo potest esse tenens et dominus.** No man can be both tenant and lord (of the same tenement.) *Gilb. Ten.* 142. See **Nullus esse, &c.**

**Nemo potest facere per alium quod per se non potest.** No one can do that by another, which he cannot do of himself. *Jenk. Cent.* 237, case 14. A rule said to hold in original grants, but not in descents; as where an office descended to a woman, in which case, though she could not exercise the office in person, she might by deputy. *Id. ibid.*

**Nemo potest facere per obliquum quod non potest facere per directum.** No man can do that indirectly, which he cannot do directly. 1 *Eden*, 512.

**Nemo potest mutare consilium suum in alterius injuriam.** No man can change his purpose to another's injury. *Dig.* 50. 17. 75. *Broom's Max.* [29.]

**Nemo præsumitur alienam posteritatem suæ prætulisse.** No man is presumed to have preferred another's posterity to his own. *Wingate's Max.* 285, max. 79.

**Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis.** No man is presumed to be unmindful of his eternal welfare, and especially when at the point of death. 6 *Co.* 76 a, *Sir George Curson's case.* A party doing an act in contemplation of death, is presumed to act under a proper sense of the solemnity of his situation; that is, with sincerity of purpose.\* No collusion can be averred upon a will. 6 *Co. ub. sup.*

**Nemo prohibetur plures negotiationes sive artes exercere.** No one is prohibited from following several kinds of business or several arts. 11 *Co.* 54 a, *Ipswich Tailors' case.* The common law doth not prohibit any person from using several arts or mysteries at his pleasure. *Id. ibid.*

**Nemo prohibetur pluribus defensionibus uti.** No one is prohibited from making use of several defences. *Co. Litt.* 304 a. *Wingate's Max.* 479, max. 120. Hence the allowance of several pleas on the part

of a defendant. *Id. ibid.* This rule is derived from that of the civil law, *Nemo prohibetur pluribus exceptionibus uti, quamvis diversæ sint.* *Dig.* 44. 1. 8.

*Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur.* No wise man punishes in order that past things may be recalled, but that future wrongs may be prevented. 3 *Bulstr.* 173.

*Nemo punitur pro alieno delicto.* No man is punished for the crime of another. *Wingate's Mar.* 336, max. 87.

*Nemo punitur sine injuria, facto seu defaulta.* No one is punished unless for some wrong, act or default. 2 *Inst.* 287.

*Nemo tenetur ad impossibile.* No man is bound to do an impossibility. *Jenk. Cent.* 7, case 10. Held, on this ground, that when the king's command to the judges was contrary to law, it ought not to be obeyed. *Id. ibid.*

*Nemo tenetur armare adversarium suum contra se.* No man is bound to arm his adversary against himself; (as to furnish him with an instrument to enable him to state his cause of action.) *Bract.* fol. 34. An observation of Bracton, which Britton (c. 39,) has rendered in French, *Nul n'est tenu de armer son adversarie*, and which has passed into a maxim of the common law, though its strictness has been much relaxed in modern practice. *Co. Litt.* 36 a. *Wingate's Mar.* 665, max. 171. *Best on Evid.* 487, § 442.

*Nemo tenetur divinare.* No man is bound to divine, or to have foreknowledge of a future event. 10 *Co.* 55 a. 4 *Id.* 28.

*Nemo tenetur edere instrumenta contra se.* No man is bound to produce writings against himself. A rule of the Roman law, adhered to in criminal prosecutions, but departed from in civil questions. *Bell's Dict.*

*Nemo tenetur informare qui nescit, sed quisquis scire quod informat.* No one is bound to give information on a subject of which he is ignorant, but every one is bound to know that which he gives information about. *Branch's Princ.*

*Nemo tenetur jurare in suam turpitudinem.* No one is bound to swear to the fact of his own criminality; no one can be forced to give his own oath in evidence of his guilt. *Bell's Dict.* See *Criminate*.

*Nemo tenetur seipsum infortuniis et periculis exponere.* No one is bound to expose himself to misfortunes and dangers. *Co. Litt.* 253 b. Hence a threat of bodily

harm will excuse the performance of an act in law. *Id. ibid.*

*Nemo tenetur seipsum accusare.* No one is bound to accuse himself. *Wingate's Mar.* 486. 1 *Bl. Com.* 443. *Nemo tenetur prodere seipsum.* No man is bound to betray himself. 1 *Greenl. Ev.* § 224.

*Nemo videtur fraudare eos qui sciunt et consentiunt.* No one seems [is supposed] to defraud those who know and assent [to his acts.] *Dig.* 20. 17. 145.

NEMY, *Nemi.* L. Fr. Not. *Nemy come heire*; not as heir. *Litt. sect.* 3.

NEPHEW. [from L. Fr. *neveu*, (q. v.) and so pronounced, according to the English authorities.] A brother's or sister's son. "All my *nephews* and nieces," in a bequest, held to include nephews and nieces of the half blood as well as of the whole blood. 2 *Jones' Eq. R.* 202.

In old English law. A grandson. (Lat. *nepos*, Fr. *neveu*, qq. v.)

NEPORQUANT. L. Fr. Nevertheless. *Fet Assaver*, § 46.

NEPOS. Lat. In the civil law. A grandson. *Supra*, *avus*, *avia*; *infra*, *nepos*, *neptis*; above, grandfather, grandmother; below, grandson, granddaughter. *Inst.* 3. 6. 1. Bracton uses *nepos* in the same sense. *Bract.* fol. 67, 68. In Britton it is rendered *neveu*, (q. v.) *Britt.* c. 119. The old Scotch *nepuoy* (q. v.) is probably derived from *nepos*.

NEPTIS. Lat. In the civil law. A granddaughter. *Inst.* 3. 6. 1. Bracton uses the word in the same sense. *Bract.* fol. 67, 68. In Britton, it is rendered *nece*. *Britt.* c. 119. In old Scotch law, the equivalent word was *neippe*, (q. v.)

NEPUOY. O. Sc. In Scotch law. A grandson. *Skene de Verb. Sign. voc. Eneya*.

NEQUITER. Lat. In old English law. Wickedly. *Fleta*, lib. 1, c. 31, §§ 6, 7, 8.

NESCIENCE. [from Lat. *nescire*.] Ignorance. 6 *Mod.* 286.

NETHER. O. Eng. Under; lower. *Nether-vert*; underwood. See *Vert*. "Nether" and "over" are used in the old books as distinctions of places. See *Yearb. M.* 9 Edw. III. 56.

NEUTRAL. [Lat. *neutralis*, from *neuter*, neither.] In international law. On neither side; taking neither side; belonging to neither side; indifferent between contending parties. A neutral nation or power is one that takes no part in a contest going on between others, who are called *belligerents*.\*

1 *Kent's Com.* 115. See *Wheat. Int. Law*, 480.

**NEUTRALITY.** In international law. A state of being neutral, or on neither side; a state of indifference between contending parties. 1 *Kent's Com.* 114. *United States Digest*, Neutrality.

**NEVER INDEBTED.** [L. Lat. *nunquam indebitatus*.] In English practice. A form of plea in actions of debt on simple contract, substituted by the late Pleading Rules in place of the plea of *nil debet*, (q. v.) *Reg. Hil. T.* 4 Will. IV. *Steph. Pl.* 156. The substance of it is that the defendant "never was indebted in manner and form as in the declaration alleged." *Id. ibid.* It is made the proper form of plea in cases where the defendant means to deny, in point of fact, the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would, by law, be implied. *Wharton's Lex.*

**NEVEU.** L. Fr. In old English law. A grandson. *Desouth le pleintife* (says Britton, describing a figure or diagram illustrative of the degrees of succession,) *soit mis un fitz ou fille, et celuy face le premier degree avalaunt; et desouth soit mis ou neveu ou nece, et celuy face le second degree*; under the plaintiff let there be put a son or daughter, and this makes the first degree descending, and under [the son or daughter,] let there be put a grandson or granddaughter, and this makes the second degree. *Britt. c.* 119.

*Neveu* is undoubtedly the original form of the modern *nephew*, though the latter word is now exclusively used to denote a brother's or sister's son.

**NEW ASSIGNMENT.** [L. Fr. *novel assignment*.] In pleading. A species of pleading on the part of a plaintiff, (most commonly occurring in actions of trespass,) sometimes termed a replication, (from its following the defendant's plea,) but which is, in fact, a re-statement of the cause of action alleged in the declaration, in a more minute and circumstantial manner, being in the nature of a new or repeated declaration. Its necessity arises from the very general mode of declaring allowed in such actions, in consequence of which, the defendant is sometimes led to apply his plea to a different matter from that which the plaintiff had in view; or, in other words, to plead an evasive plea. *Steph. Pl.* 220—228. 1 *Chitt. Pl.* 624.

**NEW FOR OLD.** A term in the law of insurance, applied to a deduction made in the adjustment of losses. In the case of a partial loss, the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for the repairs, and to allow the deduction of one-third *new for old* upon the balance. 3 *Kent's Com.* 339. *Stevens & Benecke on Average*, 374.

**NEW STATUTES.** See *Nova statuta*.

**NEW TRIAL.** In practice. A second (and, in some cases, a third) trial of a cause, granted by the court, on motion of the party dissatisfied with the result of the previous trial, upon a proper case being presented for the purpose.\* A rehearing of the cause before another jury. 3 *Bl. Com.* 391.

New trials are granted on the ground either of *irregularity*, such as want of notice of trial; *misconduct* of the prevailing party or of the jury, during the trial; or on the *merits* of the cause itself; as where the jury have given a verdict against law or without evidence, or contrary to evidence, or have given exorbitant damages, or where the judge has erred in allowing or refusing evidence, or has misdirected the jury, or where a new and material fact has come to light since the previous trial. See 3 *Bl. Com.* 387, 392. 3 *Steph. Com.* 624—627. *Steph. Pl.* 94, 95. 1 *Burr. Pr.* 468. *United States Digest*, New trial.

**NEW WORK.** [Lat. *novum opus*; Fr. *nouvel œuvre*.] In the civil law. An edifice or other work newly commenced on any ground whatever. *Civil Code of Louis.* art. 852.

**NEWSPAPER.** A paper or publication conveying *news* or intelligence.

A printed publication, issued in numbers at stated intervals, conveying intelligence of passing events.

The term *newspaper* is popularly applied only to such publications as are issued in a single sheet, and at short intervals, as daily or weekly. It is not, however, the *form*, so much as the *subject matter* of a publication which seems properly to constitute it, in law, a newspaper. Hence publications consisting of more than one sheet, and issued in pamphlet form, at longer intervals, may, if principally, or in great part, devoted to the transmission of news, be considered, for certain purposes, as newspapers.

**NEXI.** Lat. [plur. of *nexus*, from *nec-tere*, to bind.] In the Roman law. Bound; bound persons. A term applied to such insolvent debtors as were delivered up to their creditors, by whom they might be held in bondage until their debts were discharged. *Calv. Lex. Adam's Rom. Ant.* 49.

**NEXT FRIEND.** [L. Fr. *prochein ami*; L. Lat. *proximus amicus*.] In practice. A person, usually a near relative, by whom an infant sues at law or in equity. 1 *Tidd's Pr.* 99. 1 *Daniell's Ch. Pr.* 88—105.

**NEXT OF KIN.** [L. Fr. *prochein du saunk*.] Nearest of blood. A term applied, in the law of descent and distribution, to the nearest blood relatives of a deceased person, though it is sometimes construed to mean only those who are entitled to take under the statute of distributions, and sometimes to include other persons. 2 *Story's Eq. Jur.* § 1065 b. See 2 *Jarman on Wills*, 37, (28, Perkins' ed.) Nearness of kin is computed by the rule of the civil law, according to which, the father and son of the deceased stand in the first degree, the grandfather, grandson and brother in the second, the uncle and nephew in the third, cousins in the fourth, &c.; the deceased himself being the point or terminus from which the computation is made. 2 *Kent's Com.* 422. 4 *Id.* 412, *et seq.* See *Kin*.

**NICHIL.** An old form of *nihil*, (q. v.)

**NICHOL.** An old way of writing Lincoln. *Yearb. H.* 4 Hen. VI. 7.

**NIEFE, Nief.** L. Fr. [L. Lat. *nativa*.] In old English law. A female villein. *Feme que est villein est appel nief.* *Litt.* sect. 186. A woman born in vassalage. *Barr. Obs. Stat.* 238, note [k.] But the proper form of the word seems to be *neife*, (q. v.)

**NIEF.** L. Fr. [Lat. *navis*.] In old English law. A ship. *Yearb. H.* 6 Edw. III. 15.

**NIENT.** L. Fr. Not; nothing. *Nient contristeant*; *nient obstant*; notwithstanding. *Litt.* sect. 396. *Nient le meins*; nevertheless. *Kelham*.

**NIENT CULPABLE.** L. Fr. [Lat. *non culpabilis*.] In pleading. Not guilty. The old French name for the general issue of not guilty.

**NIENT DEDIRE.** L. Fr. In old practice. To deny nothing; to suffer judgment by default. *Cowell*.

The name given to that clause in a suggestion, in which it is stated that the fact suggested is *not denied*. 1 *Tidd's Pr.* 606. 2 *Id.* 723.

**NIENT LE FAIT.** L. Fr. [L. Lat. *non est factum*.] In pleading. Not the deed. *Yearb. H.* 11 Hen. VI. 21. The name formerly given to the general issue of *non est factum*. *Crabb's Hist. Eng. Law*, 213, 423. 2 *Reeves' Hist.* 331. *Nient nostre fait*; not our deed. *Yearb. T.* 1 Edw. II. 18. *Nient son fait*; not his deed. II. 3 Hen. VI. 35. M. 21 Hen. VI. 9.

**NIENT SEISI.** L. Fr. In old pleading. Not seised. The general plea in the writ of annuity. *Crabb's Hist.* 424.

**NIGHT.** [L. Fr. *nuyt*; Lat. *nox*.] In the common law of burglary. That portion of time during which it is so dark (from the absence of daylight) that the countenance of a man cannot be discerned. 1 *Hale's P. C.* 350. 4 *Bl. Com.* 224. See *Burglary*. In this sense, *night* is distinguished from *day*, as a separate portion of time; but in the general sense, the night constitutes a part of the day. See *Day*. Night-time has always been an essential circumstance in the English law of burglary. *Tempus discernit prædonem à bur-gatore.* *Fleta*, lib. 1, c. 16, § 6.

By the English statutes 7 Will. IV. and 1 Vict. c. 86, s. 4, it is declared that as regards the offence of burglary, the *night* shall be considered as commencing at nine in the evening, and concluding at six in the morning of the next day. 4 *Steph. Com.* 147.

**NIHIL, Nichil, Nil.** Lat. Nothing. See *Nil*.

In practice. A return made by a sheriff to a writ of *scire facias*, that the bail or defendants have nothing (*nihil habent*) by which he can make known to them. 2 *Tidd's Pr.* 1124.

A return formerly made to process of attachment and *distringas* to compel the appearance of a defendant. 3 *Bl. Com.* 282.

A return or answer formerly made by a sheriff, on being apposed (that is, interrogated,) in the Exchequer concerning illeivable debts, that they were worth nothing. *Cowell*.

In American law. A return to an attachment in garnishee process. 4 *Penn. St. (Barr's) R.* 232.

*Nihil consensui tam contrarium est quam vis atque metus.* Nothing is so contrary

to consent as force and fear. *Dig.* 50. 17. 116.

**Nihil dictum quod non dictum prius.** Nothing is said which was not said before. Said of a case where former arguments were repeated. *Hardr.* 464.

**Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est.** Nothing is more consonant to reason, than that a thing should be dissolved or discharged in the same way in which it was created. *Shep. Touch.* 323. As that the discharge of a debt or duty created by writing (or deed,) should be by writing (or deed) also. *Id. ibid.* See **Nihil tam conveniens, &c.**

**Nihil facit error nominis, cum de corpore constat.** An error of name works no prejudice, where it is clear as to the body [or subject matter intended.] *Dig.* 18. 1. 9. 1. This maxim of the civil law has been adopted in the common law, *corpus* being taken in the sense of a corporate body. 11 *Co.* 21 a, *Dr. Ayray's case*. A misnomer in a grant to a corporation does not avoid the grant, though the right name of the corporation be not used, provided the corporation really intended be made apparent. 2 *Kent's Com.* 292. Sometimes, the maxim is more generally applied, and in place of the word *corpore*, the words *persona* or *re* are used. *Shep. Touch.* (by Preston,) 236, 247. In the original text of the Digests, *corpus* is taken in the sense of subject matter.

**Nihil in lege intolerabilius est [quam] eandem rem diverso jure censer.** Nothing is more intolerable in law, than that the same matter, thing or case, should be subject to different views of law. 4 *Co.* 93 a, *Slade's case*. Applied to the difference of opinion entertained by different courts, as to the law of a particular case. *Id. ibid.*

**Nihil magis justum est quam quod necessarium est.** Nothing is more just than that which is necessary. *Dav. R.* 12. *Branch's Princ.*

**Nihil nequam est præsumendum.** Nothing wicked is to be presumed. 2 *P. Wms.* 583.

**Nihil perfectum est dum aliquid restat agendum.** Nothing is perfect, while any thing remains to be done. 9 *Co.* 9 b, *Douman's case*.

**Nihil peti potest ante id tempus quo per rerum naturam persolvi possit.** Nothing can be demanded before the time when, by

the nature of things, it can be paid. *Dig.* 50. 17. 186.

**Nihil possumus contra veritatem.** We can do nothing against truth. *Doct. & Stud.* dial. 2, c. 6.

**Nihil quod est contra rationem est licitum.** Nothing that is against reason is lawful. *Co. Litt.* 97 b.

**Nihil quod est inconveniens est licitum.** Nothing that is inconvenient is lawful. *Co. Litt.* 66 a, 97 b. A maxim very frequently quoted by Lord Coke, but to be taken in modern law with some qualification. *Broom's Max.* 84—86, [140.]

**Nihil tam naturale est, quam eo genere quidque dissolvere quo colligatum est.** Nothing is so natural as to dissolve a thing by the same kind of means, by which it was bound together. *Dig.* 50. 17. 35. See *Id.* 153. This maxim of the civil law is otherwise expressed by Bracton, **Nihil tam conveniens est naturali æquitati, quam unumquodque dissolvi eo ligamine quo ligatum est,** (Nothing is so consonant to natural justice, as that every thing should be dissolved by the same kind of tie with which it is bound;) and applied to the dissolution of the connection of homage by the same mutual consent by which it was created. *Bract.* fol. 78 b. The maxim in the latter form is constantly quoted by Lord Coke, and has been extensively adopted in the common law. 2 *Inst.* 359, 360. Every contract or agreement ought to be dissolved by matter of as high a nature as the first deed, or as that which first made it obligatory. 5 *Co.* 26 a, *Countess of Rutland's case*. 2 *Id.* 53 a. 4 *Id.* 57 b. *Shep. Touch.* 396. *Broom's Max.* 407, [681.] *Best on Evid.* 250, § 206. It does not apply, however, to the dissolution of the contract of partnership. *Story on Partn.* § 271. Other forms of this maxim occur in the books. **Nihil est tam naturale quam quidlibet dissolvi eo modo quo ligatur.** (Nothing is so natural as that a thing should be dissolved in the same way in which it was created;) contract by contract, deed by deed, record by record. *Jenk. Cent.* 166, case 20. **Quomodo quid constituitur, eodem modo dissolvitur.** *Id.* 74, case 40.

**Nihil tam conveniens est naturali æquitati, quam voluntatem domini volentis rem suam in alium transferre, ratam haberi.** Nothing is so agreeable to natural equity, as that the will or intention of an owner desiring to transfer his property to another,

should be ratified or confirmed. *Inst.* 2. 1. 40. *Dig.* 41. 1. 9. 3. This civil law maxim is quoted by Bracton, and from the latter writer by Lord Coke. 1 *Co.* 100 a, *Shelley's case*.

*Nihil tam proprium imperio quam legibus vivere.* Nothing is so becoming to authority, as to live in accordance with the laws. *Fleta*, lib. 1, c. 17, § 11.

*NIL*, (a contraction of *NIHIL*.) Lat. Nothing. *Nil sine prudenti fecit ratione retustus*; antiquity did nothing without a good reason. *Co. Litt.* 65. See *Nihil*.

*Nil temere novandum.* Nothing should be rashly changed. *Jenk. Cent.* 163, case 9. No innovation should be rashly introduced.

*NIL CAPIAT*, (or, *QUOD NIL CAPIAT*, that he take nothing.) L. Lat. In practice. A name given to the judgment for the defendant in an action at law, where the issue has arisen on a pleading in bar. So called from the emphatic words of the entry of judgment in the old form: *Ideo consideratum est quod prædictus—NIL CAPIAT per breve sed quod sit in misericordia*, &c. Literally translated in the modern precedents: "Therefore it is considered that the said (plaintiff) take nothing by his writ (bill or declaration,) but that he be in mercy," &c. *Arch. Forms*, 129.

*NIL DEBET.* L. Lat. (He owes nothing.) In pleading. The name of the general issue in an action of debt on simple contract. 3 *Bl. Com.* 305. 1 *Burr. Pr.* 167. See 1 *Kent's Com.* 260, 261. So called from the emphatic words of the plea when framed in Latin: *Et dicit quod ipse NON DEBET præfato—præd.* 20*l. nec aliquem inde denarium*, &c. (And says that he does not owe the said—the aforesaid 20*l.* nor any penny thereof.) *Towns. Pl.* 483. *Nil debent*; they owe nothing. 10 *East*, 366.

In England, the plea of *nil debet* is not now allowed in any action. *Reg. Gen. Hil. T.* 4 Will. IV. See *Never indebted*.

*NIL* (or *NIHIL*) *DICIT.* L. Lat. (Says nothing.) In practice. A name given to the judgment entered on the default of a defendant to plead to the plaintiff's declaration. 3 *Bl. Com.* 397. 1 *Tidd's Pr.* 562. So termed from the emphatic words of the ancient entry on the record: *Et prædictus—venit et defendit, &c. et NIHIL in barram sive præclusionem actionis prædicti—DICIT, per quod*, &c.

*Towns. Pl.* 432. Literally translated in the modern precedents, "And the said (defendant)—comes and defends, &c. and says nothing in bar or preclusion of the action of the said (plaintiff) whereby," &c. *Arch. Forms*, 336.

*NIL HABUIT IN TENEMENTIS.* L. Lat. (He had nothing in the tenements.) In old pleading. A plea in an action of debt upon a lease. 2 *Ld. Raym.* 1154.

*Nimia subtilitas in jure reprobatur.* Excessive subtlety is reprobated in law. 4 *Co.* 5 b, *Vernon's case*. *Wingate's Max.* 26. *Broom's Max.* [141.] The law discourages curious and nice exceptions, tending to the overthrow or delay of justice. See *Apices juris non sunt jura*.

*NIMIS.* Lat. Too much; too.

*NISI.* Lat. Unless. *Nisi convenissent in manum viri*; unless they should come into the power of a husband; unless they should marry. A phrase applied in Roman law to women, who were subject to perpetual guardianship until married. 1 *Bl. Com.* 464. See *Rule nisi*.

*NISI PRIUS.* L. Lat. (Unless before, or unless sooner.) In practice. A common law phrase of high antiquity, unmeaning in its literal translation as at present applied, but of great significance in practice, and equally familiar to the jurisprudence of England and the United States; being constantly used to denote the system of *trial of issues of fact*, in civil cases, *before a jury*, as distinguished from the *argument of issues* and questions of law *before the court in bench*. Originally consisting merely of two ordinary words in a writ and record, it came to be used, from its convenience, as the name of the writ by virtue of which an issue of fact was tried, of the record used for the trial, of the court in which the trial was had, of the jury, of the trial itself, and finally of the whole system of trial, as already described.

\* \* The origin of this important phrase may be explained as follows: Originally, an action was triable only in the court where it was brought, and there the parties and the jurors were always summoned to appear. But it was provided by Magna Charta, in ease of the subject, that *assises of novel disseisin and mort d'ancestor*, (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to

be sent into every county, once a year, to take these assises there. 1 *Reeves' Hist. Eng. Law*, 246. These justices, it may be observed, continued to be called in Bracton's time by their original name of *justices itinerant* or in eyre, their court being also termed, as before, the *eyre* or *iter*. *Bract.* fol. 109, 110. The system of local trials, being found convenient, was soon applied not only to assises but to other actions, but, in consequence of the uncertainty which at that early period was found to attend the holding of the local courts, eyres or assises, (or, in Bracton's words, *quia bene poterit iter multipliciter impediri, revocari vel suspendi*,) the practice was continued of summoning the parties to appear as before in the superior court, at a certain day, or in the language of the record, giving them a day in the bench, (*in banco*,) UNLESS BEFORE (that day,) the justices itinerant should come to the places designated for the trial, (*NISI justitiarum itinerantes PRIUS venerint ad partes illas*.) *Bract.* fol. 110. The statute of Westminster 2, (13 Edw. I. c. 30, afterwards called the statute of Nisi Prius,) confirmed this practice, and introduced a similar condition into the process for summoning the jury, by providing that writs of *venire* for summoning juries to the superior courts should be in the following form: *Præcipimus tibi quod venire facias coram justitiariis apud Westm. in Octabis Scti Michaelis NISI, talis et talis, tali die et loco ad partes illas venerint, duodecim, &c.* [We command you that you cause to come before our justices at Westminster, on the octave of St. Michael, UNLESS such and such a one, at such a day and place, shall come to those parts, twelve, &c.] Mr. Serjeant Stephen considers this statute as the foundation of the present system of trial at *nisi prius*, and Mr. Spence supposes that the term *nisi prius* itself originated in its provisions. *Steph. Pl. Appendix*, Note (30.) 1 *Spence's Chancery*, 116, note. But the passage in Bracton, already referred to, and which is quoted by Blackstone, though not noticed by the writers just named, seems to carry back both the system and the term itself to a much earlier date. 3 *Bl. Com.* 352.

The words *nisi prius*, now generally treated as untranslatable or unmeaning, are, in their very simplicity, singularly expressive of the character of the system of local trials, at the remote period to which

it has been traced. The trial was then a contingency, that might or might not happen, the justice might or might not come into the county, the circuit or *iter* might be in various ways prevented or suspended (*poterit iter multipliciter impediri, vel suspendi*,) or, in modern phrase, might *fall through*. Hence it was presented on the record, in the way of an *exception*, that might or might not have effect, and introduced, as it were, by the by, as something collateral and subordinate to the main course of the proceedings. And the *nisi prius* clause (as it is termed) has in practice retained this character of a condition or exception ever since, although the system of local trials itself has long been established on a permanent foundation. 3 *Bl. Com.* 352—354.

**NISI PRIUS CLAUSE.** In practice. A clause entered on the record in an action at law, and introduced also into the jury process, authorizing the trial of the cause in the particular county designated. It was first used by way of continuance, the parties having a day given them in the court above, *unless, before (nisi prius)* that day, the justices assigned to try the cause should come into the county. *Bract.* fol. 110. See *Nisi prius*. It was afterwards introduced into the process for summoning the jury (now called the *venire*,) which was hence termed the *writ of nisi prius*. In this way it came to be entered on the record made up for the trial, which was hence termed the *nisi prius record*, from which it was finally transferred to the judgment roll or record. In English practice, this clause has long been omitted in the *venire*, being inserted in the *distringas juratores*, (q. v.) which is now the effective process. Its form, as now entered on the record, is as follows: "Afterwards, on the — day of — &c. the jury between the parties aforesaid is respited here until the — day of —, UNLESS [the judge or judges of *nisi prius* and assise] shall first come on the — day of —, at," &c. This is a very close translation of the old Latin entry:—*Jurata ponitur in respectum hic usque, &c. NISI dominus T. T. &c. die, &c. PRIUS venerit, &c.* *Towns. Pl.* 430.

The *nisi prius* clause has been used in American practice, though it is now in a great degree dispensed with.

**NISI PRIUS COURT.** A court held for the trial of issues of fact, before a jury and a single presiding judge.

**NISI PRIUS RECORD.** In practice. A record made up for the use of the court on a trial at *nisi prius*, serving both as a warrant to the judge who is to try the cause, and as a guide as to the nature of the issue to be tried. It consists of entries of the pleadings, and of the award of jury process, in a certain order and form, and is, in other words, a historical summary of the proceedings from the commencement of the action down to the time at which it is made up. In England, it is written on parchment, and is required to be sealed and passed, as it is termed, at the proper office, before it can be used. It derives its name from the clause of *nisi prius*, with which it concludes; by which the jury are respited or the cause continued to a certain day, unless the judge or judges of *nisi prius* and assise shall first come, on a certain day, at the place designated. *Steph. Pl.* 78—80. 2 *Tidd's Pr.* 775, 776. 3 *Steph. Com.* 589.

**NISI PRIUS WRIT.** The old name of the writ of *venire*, which originally, in pursuance of the statute of Westminster 2, contained the *nisi prius* clause. *Reg. Jud.* 28, 75. *Cowell.* The clause, however, as it appears in the forms, was not in the original *nisi prius* form, but in the alternative, the jury being directed to be summoned to come before the justices at Westminster, &c. or before the justices of assise if they should sooner come to the place of trial, on the day designated. The emphatic Latin words were not *nisi prius*, but *vel si prius*. See *Reg. Jud. ub. sup.*

**NOBILE OFFICIUM.** Lat. Noble office or privilege. A term in Scotch law, said not to admit of a precise definition. *Bell's Dict.* Bell describes it as that power or privilege of a court of equity, which enables it to give redress by abating the rigor of strict law.

**NOCENT.** [from Lat. *nocere*.] Guilty. "The *nocent* person." 1 *Vern.* 429.

**NOCERE.** Lat. To hurt or damage; to offend or annoy; to produce an inconvenience; (*damnum dare, incommodum adferre*.) *Calv. Lex.* Properly applied to persons. *Id.*

**NOCIVUS.** Lat. [from *nocere*, q. v.] In old practice. Hurtful; pernicious; noxious. Called, by Lord Mansfield, "a very technical term." 1 *Burr.* 337.

**NOCTANDRE.** L. Fr. By night. *Yearb. M.* 5 Edw. III. 31.

**NOCTANTER.** Lat. [from *nox*, night;

L. Fr. *noctandre, nutauntre*.] By night. *Fleta*, lib. 4, c. 27, § 17.

**NOCTES DE FIRMA.** L. Lat. In English law. Nights of farm or rent; entertainments at night by way of rent. Otherwise expressed as *firmæ noctium*. *Spelman.* See *Firma*.

**NOCTURNUS.** Lat. [from *nox*, night.] In old English law. Nocturnal. *Fur nocturnus*; a night thief. *Fleta*, lib. 1, c. 16, § 6. This was not the same with a burglar, (*burgator*.) *Id.* See *Grotius, de Jur. Bell.* lib. 2, c. 1, § 12.

**NOCUMENTUM.** Lat. [from *nocere*, to annoy.] In old English law. A nuisance. *Bract.* fol. 221. *Nocumentum damnosum*; a nuisance occasioning loss or damage, (or *damnum sine injuria*.) *Id. ibid.* *Nocumentum injuriosum*; an injurious nuisance. *Id.* For the latter only a remedy was given. *Id.* See *Fleta*, lib. 4, c. 26, § 2.

**NO'EN.** A contraction of *nomen*. *No'is* of *nominis*. *No'i'e* of *nomine*. 1 *Inst. Cler.* 11.

**NOLI PROSEQUI.** An old, though incorrect form of *nolle prosequi*. *Com.* 312.

**NOLIS.** Fr. [from Lat. *naulum*, q. v.] In French law. Freight. The same with *fret*. *Ord. Mar.* liv. 3, tit. 3.

**NOLISSEMENT.** Fr. [from *nolis*, q. v.] In French marine law. Affreightment. *Ord. Mar.* liv. 3, tit. 1.

**NOLLE.** Lat. To be unwilling; to will not to do a thing; to refuse to do a thing. Used, in the civil law, to denote a voluntary act under full knowledge. *Calv. Lex.* A distinction was made between *nolle* and *non velle*. *Id.* *Ejus est nolle, qui potest velle*, (q. v.)

**NOLLE PROSEQUI.** Lat. (Will not prosecute.) In practice. The name of an entry made by a plaintiff in an action at law, where he wishes to discontinue the action, either wholly, or (more commonly) as to some of the counts of his declaration, or as to some of several defendants. 1 *Burr. Pr.* 148, 385. So termed from the emphatic words in the old forms, the plaintiff declaring that he *will not further prosecute* his suit as to the counts or defendants named. See 1 *Peters' R.* 46, 73, *et seq.* Story, J.

A proceeding on an indictment by which the prosecuting officer agrees to prosecute no farther, either as to the whole of the indictment, or as to some particular part of

it. 1 *Chitty's Crim. Law*, 478—480, (Perkins' ed. notes.)

NOMEMENT. L. Fr. Namely; to wit. *Britt. c. 27. Kelham.*

NOMEN. Lat. A name. *Nomen dicitur à noscendo, quia notitiam facit; Nomen* (a name) is so called from *noscendo* (knowing,) because it causes knowledge. 6 *Co. 65 a, Sir Moyle Finch's case.*

*Nomen est quasi rei notamen; Nomen* (a name) is, as it were, *notamen rei*, (the mark of a thing.) 11 *Co. 20 b, Dr. Ayray's case.* Calvin quotes the same etymology from *Diomed. lib. 1, Grammat.*

*Præsentia corporis tollit errorem nominis.* The presence of the body (or substantial thing itself,) takes away the effect of error in the name of it. *Bacon's Max. 96, reg. 25.*

*Nomen non sufficit, si res non sit de jure aut de facto.* A name is not sufficient, if there be not a thing [or subject for it,] *de jure* or *de facto*. 4 *Co. 107 b, Adams and Lambert's case.*

NOMEN. Lat. In the Roman law. A name; including, in the most general sense, the three names of *prænomen*, *nomen* (proper,) and *cognomen*. *Calv. Lex. See Cod. 6. 23. 4.*

In a strict sense,—the second of the three names which the Romans commonly had, following the *prænomen*, and marking the *gens* to which the individual belonged. It commonly ended in *ius*; as *Cornelius, Fabius, Octavius, &c.* *Adam's Rom. Ant. 36. Butler's Hor. Jur. 28.*

A debtor; the obligation of a debtor. *Vendere nomen*; to sell a name or obligation. *Calv. Lex. Cod. 4. 10. 7. See Cic. Att. v. 21. Horat. Sat. i. 2, 16. Id. Ep. ii. 1, 105.* The word *name* is still familiarly used in this sense.

A debt; the cause of a debt; an article of an account. *Adam's Rom. Ant. 547, and the authorities cited ibid.*

NOMEN. Lat. In old English law. A name; the name. The given or baptismal name of a person, as Matthew, Andrew, Peter, Paul. Distinguished from the *cognomen* (q. v.) or surname. See *Fleta*, lib. 4, c. 10, §§ 7, 9. *Fleta* mentions the *prænomen*, *agnomen* and *cognomen*. *Id. § 9.*

NOMEN COLLECTIVUM. Lat. A collective name, or term; a term expressive of a class; a term including several of the same kind; a term expressive of the plural as well as singular number. *Skin.*

205. A term descriptive of person or interest, or both. *Eyre, C. J. 1 Bos. & Pull. 243.*

NOMEN GENERALE. Lat. A general name; the name of a *genus*. *Fleta*, lib. 4, c. 19, § 1.

NOMEN GENERALISSIMUM. L. Lat. A name of the most general kind; a name or term of the most general meaning. By the name of *land*, which is *nomen generalissimum*, every thing terrestrial will pass. 2 *Bl. Com. 19. 3 Id. 172.*

NOMEN JURIS. Lat. A name of law. A legal name or designation; a technical term. 2 *Swinton's R. 429.*

NOMINA. Lat. [plur. of *nomen*, q. v.] Names. *Nomina sunt notæ rerum.* Names are the marks of things. 11 *Co. 20 b. Nomina sunt symbola rerum.* Names are the symbols or signs of things. *Branch's Princ. Nomina significandorum hominum reperta sunt, qui si alio quolibet modo intelligantur, nihil interest*; names were invented for the purpose of designating persons, who, if they can be known in any other way, it makes no difference. *Inst. 2. 20. 29.*

*Nomina si nescis perit cognitio rerum. Et nomina, si perdas, certi distinctio rerum perditur.* If you are ignorant of names, [without a knowledge of names,] the knowledge of things perishes. And if you lose the names, the distinction of things is certainly lost. *Co. Litt. 80 b.* The names of things are, for avoiding of confusion, diligently to be observed. *Id. ibid.*

*Nomina mutabilia sunt, res autem immobiles.* Names are mutable, but things are immoveable, [immutable.] 6 *Co. 66 a.* Applied to the name of a manor, which might be acquired by knowledge of the country, without being the true and proper name.

NOMINA VILLARUM. Lat. Names of the villages. The name of a return made by the sheriffs of England into the exchequer, in the reign of Edward II. of the names of all the villages and their possessors in every county. *Cowell. Blount.*

NOMINAL PARTNER. One who appears, or is held out to the world as a partner, but who has no real interest in the firm or business. *Story on Partn. § 80.* One who allows his name to appear in the partnership firm, and be used in the business, and thereby holds himself out to the world as apparently having an interest in it; though he may have no actual interest

in the business or its profits.\* 3 *Kent's Com.* 31, 32.

**NOMINARE.** Lat. [from *nomen*, name.] To name; to nominate; to appoint. *Calv. Lex.*

**NOMINATE CONTRACTS.** In the civil law. Contracts having a proper or peculiar name and form, and which were divided into four kinds, expressive of the ways in which they were formed; viz. 1. *real*, which arose, *ex re*, (from something done;) 2. *verbal*, *ex verbis*, (from something said;) 3. *literal*, *ex literis*, (from something written;) and 4. *consensual*, *ex consensu*, (from something agreed to.) *Calv. Lex. Hallifax, Anal.* b. 2, c. 14, num. 9. *Cooper's Just. Inst. Notes*, \*584.

**NOMINATIM.** Lat. [from *nomen*, name.] In the civil law. By name, or other special designation, (*demonstratione corporis, opificii, officii*;) specially; expressly. *Calv. Lex.* Lord Ellenborough, 12 *East*, 244.

**NOMINE PENÆ.** Lat. In the name of a penalty. In the civil law, a legacy was said to be left *nomine penæ*, where it was left for the purpose of coercing the heir to do or not to do something. *Inst.* 2. 20. 36.

In the common law, the term *nomine penæ* has been applied to a covenant inserted in a lease, that the lessee shall forfeit a certain sum on non-payment of rent, or on doing certain things, as ploughing up ancient meadow, and the like. 1 *Crab's Real Prop.* 171, § 155. *Gilbert on Rents*, 140—145. 1 *Williams on Exec.* 697.

**ΝΟΜΟΣ, Νόμος.** Gr. [from *νέμειν*, to give or distribute.] Law; so called, because *suum cuique νέμει*, (it gives to every one his due.) *Calv. Lex. Schrev. Lex.* See the definitions in *Dig.* 1. 3. 2.

**NOMOTHEA.** Græco-Lat. [Gr. *νόμος*, from *νόμος*, law, and *τιθέναι*, to lay down.] A lawgiver; such as Solon and Lycurgus, among the Greeks, and Cæsar, Pompey and Sylla among the Romans. *Calv. Lex.*

**NON.** Lat. Not. The common particle of negation. In the civil law, it sometimes had the senses of *not only*, (*non solum*;) and *not so much*, (*non tantum*, *non tam*.) *Calv. Lex.*

**NON ABILITY.** Want of ability to do an act in law, as to sue. *Cowell.* A plea founded upon such cause. *Id.*

**NON ACCEPTAVIT.** L. Lat. He did not accept. See *Acceptare*.

**NON-ACCESS.** Non-existence of sexual intercourse. 1 *Sim. & Stu.* 153. *Sugden's Law of Property*, 182, 183. See *Access*.

**Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram.** Words ought not to be taken to import a false demonstration, which may have effect by way of true limitation. *Bacon's Max.* 59, reg. 13. "Though falsity of addition or demonstration doth not hurt where you give the thing a proper name, yet nevertheless, if it stand doubtful upon the words, whether they import a false reference and demonstration, or whether they be words of restraint that limit the generality of the former name, the law will never intend error or falsehood." *Id. ibid. Broom's Max.* [498.] Lord Ellenborough, 8 *East*, 91.

**NON-AGE.** Want of age; infancy; minority. See *Age*.

**Non aliter a significatione verborum recedi oportet, quam cum manifestum est aliud sensisse testatorem.** The ordinary meaning of words should not be departed from in any other case than where it is clear that the testator intended something different. *Dig.* 32. 69, pr.

**NON ASSUMPSIT.** L. Lat. (Did not undertake.) In pleading. The general issue in an action of assumpsit. So called from the emphatic words of the old Latin form: *Et idem—defendit vim et injuriam quando, &c. et dicit quod ipse NON ASSUMPSIT super se modo et forma prout idem—superius versus eum queritur. Et de hoc ponit se super patriam, &c.* (And the said (defendant) defends the wrong and injury when, &c. and says that he did not take upon himself (or undertake) in manner and form as the said (plaintiff) above complains against him. And of this he puts himself upon the country, &c.) *Towns. Pl.* 484. Where it is pleaded by several defendants, it is called *non assumpserunt*. 8 *East*, 311. The use of this plea has been much narrowed in England by the Pleading Rules. 1 *Chitt. Pl.* 513—517.

**NON ASSUMPSIT INFRA SEX ANNOS.** L. Lat. He did not undertake within six years. The plea of the statute of limitations, in the action of *assumpsit*. So called from the emphatic words of the old Latin form. See 2 *Greenl. Evid.* § 342, and note.

**Non auditur perire volens.** He who is desirous to perish is not heard. *Best on Evid.* 423, § 385. He who confesses himself guilty of a crime, with the view of meeting death, will not be heard. A maxim of the foreign law of evidence. *Id. ibid.*

**NON BAILABLE.** In practice. Not admitting of bail; not requiring bail. See *Bailable*.

**NON CEPIT.** Lat. He did not take. The general issue in replevin, where the action is for the wrongful *taking* of the property; putting in issue not only the taking, but the *place* in which the taking is stated to have been made. *Steph. Pl.* 157, 167.

**NON CLAIM.** In old English law. The omission or neglect of one that ought to challenge his right within a time limited, by which neglect he was barred of his right or of his entry. *Cowell. Termes de la Ley.* 2 *Bl. Com.* 354. 1 *Steph. Com.* 521.

**NON COMPOS MENTIS.** Lat. Not in possession, or not having power of one's mind, or mental faculties; of unsound mind or memory. *Litt. sect.* 405. *Fleta*, lib. 2, c. 61, § 16. This term is used by Blackstone as a synonyme of *lunatic* or *madman*. 1 *Bl. Com.* 304. 2 *Id.* 497. But Lord Coke interprets it in a wider sense, making it to include both an idiot and lunatic, as well as one that by sickness, grief, or other accident, wholly loses his memory and understanding. *Co. Litt.* 246 b, 247 a. Mr. Stock, in a treatise devoted expressly to the subject, adopts *non compos mentis* as the most general expression, embracing, and to a certain extent defining all states of mind contradistinguished from the rational one. *Stock on Non Comp. Mentis*, Introd. See 2 *Kent's Com.* 451, 453. 1 *Story's Eq. Jur.* § 223, 230.

**NON CONCESSIT.** L. Lat. He did not grant. The name of a plea pleaded by a stranger to a deed; estoppels not holding with respect to strangers. *Wharton's Lex.*

**Non consentit qui errat.** He who mistakes does not consent. *Bract.* fol. 44. See *Consentire*.

**NON CONSTAT.** L. Lat. It does not appear; it is not apparent or clear. *Cro. Car.* 52. 3 *East*, 111. 2 *P. Wms.* 643. *Non constat quid inde venit*; it does not appear what became of it. A

reporter's note. *Hardr.* 65. *Non constabat*; it did not appear. *Gibbs, C. J.* 5 *Taunt.* 527.

**NON CULPABILIS.** L. Lat. Not guilty. The general issue in the action of trespass. 3 *Bl. Com.* 305. So called from the emphatic words of the old Latin form: "*Et dicit quod ipse non est inde culpabilis. Et de hoc ponit*," &c., (and says that he is not guilty thereof. And of this he puts, &c.) *Towns. Pl.* 484.

**NON DAMNIFICATUS.** L. Lat. Not damnified, or harmed. A plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified," &c. It is in the nature of a plea of performance; being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition. *Steph. Pl.* 360. See 8 *Grattan's R.* 539.

**Non debet actori licere quod reo non permittitur.** A plaintiff ought not to be allowed what is not permitted to a defendant. A rule of the civil law. *Dig.* 50. 17. 41.

**Non debet adduci exceptio ejus rei cujus petitur dissolutio.** A plea of the same matter, the dissolution of which is sought [by the action] ought not to be brought forward. 2 *Lord Raym.* 1433. *Broom's Max.* [125.] Otherwise expressed, *Exceptio rei cujus dissolutio petitur, nulla est.* *Jenk. Cent.* 37, case 71. See *Non potest*, &c.

**Non debet [deberet] alii nocere, quod inter alios actum est, [esset.]** A person ought not to be prejudiced by what has been done between others. *Dig.* 12. 2. 10.

**Non debet cui plus licet, quod minus est non licere.** He to whom the greater is lawful, ought not to be debarred from the less as unlawful. *Dig.* 50. 17. 21. *Broom's Max.* [130.] See *Cui licet quod majus*, &c.

**Non decipitur qui seipsum seipsum decipi.** He is not deceived who knows himself to be deceived. 5 *Co.* 60 b, *Gooch's case*.

**NON DEMISIT (or DIMISIT.)** L. Lat. (He) did not demise. The name of a plea in an action of debt for rent on a parol lease, denying the demise. 1 *Tidd's Pr.* 650.

**NON DETINET.** L. Lat. He does not detain. The name of the general issue in the action of detinue. 1 *Tidd's Pr.* 645.

The general issue in the action of replevin

vin, where the action is for the wrongful detention only. 2 *Burr. Pr.* 14.

**Non differunt quæ concordant re, tametsi non in verbis iisdem.** Those things do not differ, which agree in substance, though not in the same words. *Jenk. Cent.* 70, case 32.

**Non efficit affectus nisi sequatur effectus.** The intention amounts to nothing unless the effect follow. 1 *Roll. R.* 226.

**NON erit alia lex Romæ, alia Athænis; alia nunc, alia posthac; sed et omnes gentes, et omni tempore, una lex, et sempiterna, et immortalis continebit.** There will not be one law at Rome, another at Athens; one law now, another hereafter; but one eternal and immortal law shall bind together all nations throughout all time. *Cic. Frag. de Repub. lib. 3.* 3 *Kent's Com.* 1. Quoted by Lord Mansfield, with some variation in the reading,—(*sed et apud omnes gentes et omni tempore, una eademque lex obtinebit*;) and applied to the universal adoption of the maritime law, as the general law of nations. *Luke v. Lyde*, 2 *Burr.* 883, 887. *Story*, J. 16 *Peters' R.* 1, 19.

**NONES.** [Lat. *nonæ*, from *nonus*, ninth.] In the Roman calendar. The fifth, and in March, May, July and October, the seventh day of the month. So called, because, counting inclusively, they were nine days from the ides. *Adam's Rom. Ant.* 355, 357.

**Non est acrius vinculum inter homines quam jusjurandum.** There is no closer [or firmer] bond between men than an oath. *Jenk. Cent.* 126, case 54.

**Non est disputandum contra principia negantem.** There is no arguing with one who denies principles. *Branch's Princ. Co. Litt.* 343 a.

**NON EST FACTUM.** L. Lat. (Is not [his] deed.) The name of the general issue in an action of debt on bond. So called from the emphatic words in the old Latin form: *Et dicit quod ipse de debito prædicto, virtute scripti obligatorii prædicti onerari non debet, quia dicit quod scriptum obligatorium prædictum NON EST FACTUM suum. Et de hoc ponit se super patriam.* (And says that he ought not to be charged with the aforesaid debt, by virtue of the aforesaid writing obligatory, because he says that the said writing obligatory is not his deed. And of this he puts himself upon the country.) *Towns. Pl.* 484.

**NON EST INVENTUS.** L. Lat. (Is

not found.) In practice. The name of the return made by a sheriff to a writ of *capias* or *ca. sa.* where the party named in the writ is *not found* in his bailiwick or county. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 308. 2 *Id.* 1028, 1098. The return, as actually made, is usually expressed by the English words "*not found*," endorsed upon the writ, and signed by the sheriff. But it is called in the books a return of *non est inventus*, from the emphatic words of the return, as formerly made in Latin: *Infranominatus C. D. NON EST INVENTUS in balliva mea.* (The within named C. D. is not found in my bailiwick.) When there were several so returned, the proper words were *non sunt inventi*, (in the plural;) but "*non est*," although bad grammar where there were two defendants, was lately held in New-York to be a good return. 2 *Hill's R.* 598.

**Non est novum ut priores leges ad posteriores trahantur.** It is not a new doctrine that prior laws shall give place to later ones. *Dig.* 1. 3. 26. See *Id.* 1. 4. 4. *Broom's Max.* [24.] See *Leges posteriores, &c.*

**Non est singulis concedendum quod per magistratum publice possit fieri, ne occasio sit majoris tumultus faciendi.** That is not to be allowed to individuals, which can be publicly done by a magistrate, lest it be the occasion of making greater confusion. *Dig.* 50. 17. 176.

**Non ex opinionibus singulorum, sed ex communi usu, nomina exaudiri debent.** The names of things ought to be understood, not according to the opinions of individuals, but according to common usage. *Dig.* 33. 10. 7. 2.

**Non facias malum, ut inde fiat bonum.** You are not to do evil, that good may be or result therefrom. 11 *Co.* 74 a. 5 *Co.* 30 b, *Coulter's case.*

**NON FEASANCE.** A not doing; an omission to do something that ought to be done.\* The not doing of that which it was a party's duty or contract to do. 1 *Chitt. Gen. Pr.* 9.

**NON IMPEDIVIT.** L. Lat. (He did not hinder or disturb.) In English practice. The general issue in *quare impedit*. 3 *Wooddes. Lect.* 9.

**Non impedit clausula derogatoria, quominus ab eadem potestate res dissolvantur a quibus [qua] constituuntur.** A derogatory clause [that is, a clause disabling a person to do some future act,] does not prevent things or acts from being dissolved by the

same power by which they were originally made or done. *Bacon's Max.* 74, reg. 19. Thus, if a man make a will, and in the end of it add a clause, that if he shall revoke the present will, or declare any new will, except in a certain form, that such revocation or new declaration shall be utterly void; this clause, or any similar one, is of no force or efficacy to fortify the former will against the second, but the testator may revoke it and make a new.\* *Id.* 75. The reason given by Lord Bacon why a derogatory clause (called also *clausula de non obstante de futuro*), is idle and of no force is, "because it doth deprive men of that which of all other things is most incident to human condition, and that is alteration or repentance." *Id.* 74. *Broom's Max.* [24.]

**NON INFREGIT CONVENTIONEM.** L. Lat. He did not break the covenant. The name of a plea sometimes pleaded in the action of covenant, and intended as a general issue, but held to be a bad plea; there being, properly speaking, no general issue in that action. 1 *Tidd's Pr.* 648. 3 *Hill's (N. Y.) R.* 187.

**Non in legendo sed in intelligendo leges consistunt.** The laws consist not in being read, but in being understood. 8 *Co.* 167 a. The mere verbal form in which a law is expressed is unimportant, if it be understood. Lord Coke (*ub. sup.*) quotes this rule in support of his remark that the opinion of a certain judge (Hussy, C. J.) was good law, *if it were well understood.*

**NON INTERFUI.** Lat. I was not present. A reporter's note. *T. Jon.* 10.

**NON-JOINDER.** In practice. Omission to join or include one or more persons as parties to an action, whether as plaintiffs or defendants. 1 *Chitt. Pl.* 13, 66, 86.

**NON-JUROR.** One who has not sworn; one who has not taken, or has refused to take a prescribed oath, such as an oath of allegiance. See 3 *H. & McHenry's R.* 101, 103. 1 *Dallas' R.* 170.

**Non jus, sed seisinam facit stipitem.** Not right, but seisin makes a stock. *Fleta*, lib. 6, c. 2, § 2. It is not a mere right to enter on lands, but actual seisin, which makes a person the root or stock from which all future inheritance by right of blood must be derived. 2 *Bl. Com.* 209, 312. This ancient maxim of the common law has recently been abrogated in England, so far as respects the descent of land

taking place on deaths since Jan. 1, 1834, by stat. 3 & 4 Will. IV. c. 106. *Broom's Max.* 226—228, [397—399.] 1 *Steph. Com.* 365—368. It is also considered as abrogated in most of the United States. 4 *Kent's Com.* 388, 389.

**Non licet quod dispendio licet.** That which may be [done only] at a loss is not allowed [to be done.] *Co. Litt.* 127 b. The law does not permit or require the doing of an act which will result only in loss. The law forbids such recoveries whose ends are vain, chargeable and unprofitable. *Co. Litt. ub. sup.*

**NON LIQUET.** Lat. It is not clear. In the Roman law and practice, where a *judex* was at a loss how to decide a cause, he made oath that he was not clear (*se non liquere*), and was thereupon discharged. *A. Gell. Noct. Att. lib.* 14, c. 2. So, in criminal trials, such of the *judices* as were undecided, deposited in the urn a ballot or tablet marked with the letters N. L. (*non liquet*.) *Adam's Rom. Ant.* 285. *Tayl. Civ. Law*, 192. This practice has never been allowed in English common law. See Lord Bacon's observations in his Reading on the Statute of Uses, *Works*, iv. 184. The expression, however, is in use. Lord Ellenborough, 11 *East*, 188.

**NONNA.** L. Lat. In old ecclesiastical law. A nun. *Spelman. Nonnus*; a monk. *Id.*

**Non observata forma, infertur annullatio actus.** Where form is not observed, an annulling of the act is inferred, or follows. 12 *Co.* 7. Where the law prescribes a form for an act or proceeding, the non-observance of such form renders the proceeding itself a nullity. This is a rule of evidence in English and French law. *Best on Evid.* Introd. 58, § 59. *Bonnier, Tr. des Preuves*, s. 334.

**NON OBSTANTE.** Lat. Notwithstanding, (or, in two words, not withstanding.) Words anciently used in public and private instruments, intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.

A clause frequent in old English statutes and letters patent, (so termed from its initial words,) importing a license from the crown to do a thing, which otherwise a person would be restrained by act of parliament from doing. *Crabb's Hist. Eng. Law*, 570. *Plowd.* 501. Said to have been taken from the papal law. *Cowell.*

A power in the crown to dispense with

the laws in any particular case. This was abolished by the Bill of Rights at the revolution. 1 *Bl. Com.* 342.

**NON OBSTANTE VEREDICTO.** L. Lat. Notwithstanding the verdict. A judgment *non obstante veredicto*, is a judgment entered, by order of the court, for the plaintiff in an action at law, *notwithstanding a verdict* in favor of the defendant. It is always upon the merits, and never granted but in a very clear case, as where it is apparent to the court from the defendant's own plea that he can have no merits.\* 2 *Tidd's Pr.* 922. Thus, where the plea confesses and attempts to avoid the declaration, by some matter which amounts to no sufficient avoidance of it in point of law, and the plaintiff, instead of demurring, has taken issue upon the truth of the plea in fact, and that issue has been found in favor of the defendant, yet the plaintiff may move that, without regard to the verdict, the judgment be given in *his* favor. For the plea having confessed the matter of fact in the declaration, and having opposed it by an allegation which, though true in fact, is bad in law, it appears upon the whole that the plaintiff is entitled to maintain his action. 3 *Steph. Com.* 629, 630.

**NON OMITTAS.** L. Lat. (You omit not.) In English practice. A clause inserted in a writ of *capias* and other process, in cases where a defendant resides within a liberty, empowering the sheriff to enter it. 1 *Tidd's Pr.* 154, 217. At present every writ under the stat. 2 Will. IV. c. 39, is framed as a *non omittas*. 3 *Chitt. Gen. Pr.* 190.

Formerly, when the defendant resided within a liberty, the bailiff of which had the execution and return of writs, the practice was, on a writ being issued to the sheriff, for the latter to make his mandate to the bailiff directing him to execute the writ. On the sheriff's returning in such case, that he had made his mandate to the bailiff, (*mandavi ballivo*,) but that the latter had not served the writ, a writ issued to the sheriff commanding him that he omit not by reason of the said liberty, (*non omittas propter libertatem*,) but that he enter himself and execute the writ. *Reg. Orig.* 83, 151 b. *Reg. Jud.* 5 b, 56 b. *Fleta*, lib. 1, c. 26, § 3; lib. 2, c. 67, § 13. Hence the name of the clause in the modern process.

**Non omne damnum inducit injuriam.** It  
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is not every loss that produces an injury. *Bract.* fol. 45 b. See *Damnum absque injuria*.

**Non omne quod licet honestum est.** Not every thing that is lawful is proper or becoming. *Dig.* 50. 17. 144.

**Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest.** There cannot be given a reason for all the things which have been established by our ancestors. *Dig.* 1. 3. 20. *Branch's Princ.* 4 *Co.* 78.

**NON-PLEVIN.** L. Fr. and Eng. In old English practice. A neglect or default in a defendant to replevin land in due time, that had been taken into the king's hand, by reason of default. Hengham describes it as a default after a default. *Heng. Magna*, c. 8. See *Fet Assaver*, § 23.

**Non possessori incumbit necessitas probandi eas [possessiones] ad se pertinere.** The burden does not lie on a possessor, of proving that his possessions belong to him. *Cod.* 4. 19. 2. *Broom's Max.* [562.]

**Non potest adduci exceptio ejus [dem] rei cujus petitur dissolutio.** A plea of the same matter, the dissolution of which is sought, [by the action,] cannot be brought forward. *Bacon's Max.* 6, reg. 2. *Wingate's Max.* 647, max. 169. Where an action is brought to defeat, undo or annul any matter or proceeding, the defendant cannot plead such matter or proceeding in bar of the action. See 3 *P. Wms.* 317. A matter, the validity of which is at issue in legal proceedings, cannot be set up as a bar thereto. *Broom's Max.* [124.]

**Non potest quis sine brevi agere.** No one can sue without a writ. *Fleta*, lib. 2, c. 13, § 4. A fundamental rule of old practice.

**Non potest videri desiisse habere, qui nunquam habuit.** He cannot be considered as having ceased to have a thing, who never had it. *Dig.* 50. 17. 208.

**Non præstat impedimentum quod de jure non sortitur effectum.** A thing or act which has not its effect by law, [or no effect in law,] offers no impediment, [or amounts to no bar.] *Jenk. Cent.* 162, case 8. *Wingate's Max.* 727, max. 195.

**NON PROS.** L. Lat. In practice. An abbreviation of **NONPROSEQUITUR**. (he does not prosecute.) The name of an entry and judgment on the part of a defendant in an action at law, where the plaintiff fails to declare in due time, by which the action is terminated with costs;

the plaintiff in such case being said to be *non pros'd.* 3 *Bl. Com.* 296. 1 *Tidd's Pr.* 458. A similar judgment may be entered for not replying to the defendant's plea. *Id.* 676. This term is sometimes erroneously confounded with *nonsuit*, (q. v.)

**Non quod dictum est, sed quod factum est inspicitur.** Not what is said, but what is done is regarded. *Co. Litt.* 36 a. A maxim applied by Lord Coke to the delivery of deeds, and in modern law to the execution of deeds and wills. *Tindal, C. J.* 6 *Bing.* 310. 1 *Metcalf's R.* 353.

**Non refert an quis assensum suum præbet verbis, an rebus ipsis et factis.** It matters not whether one gives his assent by words, or by things themselves and by acts. 10 *Co.* 52 b, *Lampet's case.* An acceptance implies an assent. *Id. ibid.*

**Non refert quid ex æquipollentibus fiat.** It matters not what is done with [what disposition is made of] equipollent [or equivalent] expressions. 5 *Co.* 122 a, *Long's case.* Equivalent words may be treated as redundancies.\* It matters not what words are omitted in an instrument, if there be tantamount words present. 5 *Co. ub. sup.*

**Non refert quid notum sit judici, si notum non sit in forma judicii.** It matters not what is known to a judge, if it be not known in judicial form. 3 *Bulstr.* 115. A leading maxim of modern law and practice. *Best on Evid.* Introd. 31, § 38.

**Non refert verbis an factis fit revocatio.** It matters not whether a revocation be made by words or by acts. *Branch's Pr. Cro. Car.* 49. But the case here quoted is against the rule.

**NON RESIDENCE.** Want of residence; cessation of residence; failure or neglect of residence. See *Residence.*

**NON RESIDENT.** One who does not reside, or is not a resident; one who resides out of a particular place or jurisdiction. See *Resident.*

**NON SANÆ MENTIS.** Lat. Of unsound mind. *Fleta*, lib. 6, c. 40, § 1.

**NON SANEMEMORY.** Unsound memory; unsound mind. A term essentially law French. See *Memory.*

**NON SEQUITUR.** Lat. Does not follow. See *Nonsuit.*

**Non solent quæ abundant vitiare scripturas.** Superfluities [things which abound] do not usually vitiate writings. *Dig.* 50. 17. 94. See *Abundare, Surplusage.*

**Non solum quid licet, sed quid est conve-**

**niens est considerandum; quia nihil quod est inconveniens est licitum.** Not only what is lawful, but what is proper or convenient is to be considered; because nothing that is inconvenient is lawful. *Co. Litt.* 66 a.

**NONSUER.** L. Fr. In old practice. To nonsuit. *Se retireist et el fuit nonsue*; withdrew himself, and she was nonsuited. *Yearb. M.* 3 *Edw. III.* 40. *Nonsuy*; nonsuited. *P.* 8 *Edw. III.* 9. *Nounsuiwy.* *H.* 3 *Edw. II.* 71.

**NON SUI JURIS.** Lat. Not one's own master. *Fleta*, lib. 2, c. 61, § 16.

**NONSUIT, Nonsuyt, Nonsute.** L. Fr. In old English law. A not following; a neglect to follow. *Pur nonsute de hu et de crie leve*; for not following of the hue and cry raised. *Britt.* c. 21.

An omission to follow up or prosecute an action. *Par la nonsuyt del pleyntyfe.* *Id.* c. 33. *Jugement de la nonsuyt*; judgment of nonsuit or for the nonsuit. *Id.* c. 27.

**NONSUIT.** L. Fr. and Eng. In practice. A failure to follow up a cause; a relinquishment of a cause on the part of a plaintiff at the trial, either voluntarily or by the order of the court; an order or award of the court granted at the trial, compelling the plaintiff to abandon the farther prosecution of the action.

A *voluntary* nonsuit is where the plaintiff, at the trial, discovers some error or defect in the proceedings which cannot be remedied, or finds that his evidence is not sufficient to maintain his case. In such case, he may submit to a nonsuit, which is done by absenting himself, or failing to answer when called to hear the verdict, upon which he is nonsuited. 3 *Bl. Com.* 376. 3 *Chitt. Gen. Pr.* 910. See *Calling the plaintiff.* A *compulsory* nonsuit is one which is ordered by the court on the motion of the defendant, or without any motion; and the most usual grounds of it are either the insufficiency of the cause of action itself, or the insufficiency of the evidence to support the case. It may be granted, also, upon grounds not affecting the merits, such as a mistake in the parties, or form of the action, or variance between the declaration and the evidence. 1 *Burr.* *Pr.* 234, 424. Compulsory nonsuits are not allowed in English practice. 2 *Tidd's Pr.* 869.

The effect of a nonsuit is to defeat the action, and give costs to the defendant,

but the plaintiff may always commence a new action for the same cause. 3 *Bl. Com.* 377.

**NON SUM INFORMATUS.** L. Lat. (I am not informed.) In practice. A species of judgment by default, so called from being founded on an averment by the defendant's attorney, that he has *no instruction* to say any thing in answer to the plaintiff, or in defence of his client. 3 *Bl. Com.* 397. 2 *Tidd's Pr.* 930. It is said to be used only in cases where judgment is entered in pursuance of a previous agreement between the parties. *Holt-house.*

**NON TENUIT.** L. Lat. (He did not hold.) The name of a plea in bar, in replevin, to an avowry for arrears of rent, that the plaintiff did not hold in manner and form as the avowry alleges. *Roscoe's Real Act.* 638.

**NON TENURE.** [L. Fr. *noun tenoure.*] In pleading. A plea by a tenant in a real action, where he is not in fact the tenant of the freehold, denying that he was tenant of the freehold of the land or rent demanded, &c. *Roscoe's Real Act.* 190. It is usually called a plea in abatement, but is not strictly so. *Id. ibid.*

**NON TERM.** [L. Lat. *non terminus.*] In old practice. The time of vacation between term and term. *Cowell.*

**NON USER.** [L. Lat. *non usus.*] Neglect to use a franchise; neglect to exercise an office. 2 *Bl. Com.* 153. Neglect or omission to use an easement or other right. 3 *Kent's Com.* 448. A right acquired by use may be lost by *non-user.* *Id. ibid.*

**NON USUS.** L. Lat. In old English law. *Non-user.* *Fleta*, lib. 4, c. 18, § 2.

**NON VALENTIA AGERE.** L. Lat. Inability to sue. 5 *Bell's Ap. Cas.* 172.

**Non valet exceptio ejusdem rei cujus petitur dissolutio.** A plea of the same matter the dissolution of which is sought, is not valid. Called a maxim of law and common sense. Henley, Lord C. 2 *Eden*, 134.

**Non valet impedimentum quod de jure non sortitur effectum.** An impediment or bar which does not derive its effect from law, is of no force. 4 Co. 31 a, *French's case.* In Branch's *Principia* and Wharton's *Lexicon*, the words *quod de jure non sortitur effectum* are erroneously rendered, "which does not destroy the force of law."

**Non verbis, sed ipsis rebus, leges imponi-**

**mus.** We impose laws, not upon words, but upon things themselves. *Cod.* 6. 43. 2.

**Non videntur qui errant consentire.** They who mistake, are not supposed to consent. *Dig.* 50. 17. 116. 2. There can be no consent, when the parties are in an error respecting the object of their agreement. *Pothier, Obl.* part 1. ch. 1, sect. 1, art. 3, § 1. A contract entered into, under a mistake of facts or circumstances going to the essence of it, is not considered as made by consent, and is therefore no contract.\* 2 *Kent's Com.* 477. "This is a clear principle of universal justice." *Id. ibid.* See *Broom's Max.* [197.] 14 *Georgia R.* 207. Another form is, *Non consentit qui errat*, (q. v.)

**Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutavit.** Where a person [under duress] has made any change from the terms of the party threatening him, he is not [for all that] considered as having retained his consent [to such terms.] *Bacon's Max.* 89, reg. 22. *Broom's Max.* [208.] See *Consensus*, for a full illustration of this maxim.

**Non videtur perfecte cujusque id esse, quod ex casu auferri potest.** That does not seem to be completely one's own, which can be taken from him on occasion. *Dig.* 50. 17. 139. 1.

**Non videtur vim facere, qui jure suo utitur et ordinaria actione experitur.** He is not considered to use force, who exercises his own right, and proceeds by ordinary action. *Dig.* 50. 17. 155. 1.

**NOOK OF LAND.** [L. Lat. *noka*, or *nocata terræ.*] In old records. A measure or description of land, of uncertain quantity. Blount observes that he had seen an old deed of Sir Walter de Pedwardyn, wherein twelve acres and a half were granted for a *noka of land*, but he thought the quantity was not certain.

**NORFF.** An abbreviation of *Norfolcia*, Norfolkshire. 1 *Inst. Cler.* 28.

**NOSAUNCE, Noysaunce.** L. Fr. [from *noier*, or *nuire*, to hurt.] A nuisance; an act done by one to the injury of another's freehold; an act by which a person is prevented from enjoying his tenement as conveniently or freely as he ought to do. The most familiar examples of nuisance in Britain, are the stopping or diverting a water-course, the stopping a way by a wall, hedge or dyke, &c. *Britt.* c. 61.

**Noscitur a sociis.** It is known from its associates. 1 *Ventr.* 225. The meaning of a word is, or may be known from the ac-

companying words. 3 *Term R.* 87. 9 *East*, 267. 6 *Taunt.* 294. *Broom's Max.* 294, [450, 455.] This maxim appears to have been first applied to the language of the law by Lord Hale, (1 *Ventr.* 225,) and, it is observed, was no pedantic or inconsiderate expression when falling from him, but was intended to convey, in short terms, the grounds upon which he formed his judgment. See 3 *Term R.* 87. 1 *B. & C.* 644. 13 *East*, 531, arg.

**NOSME.** L. Fr. Name; a name. *Nosmes nomables*; names that should be named; necessary names. *Britt.* c. 48. Kelham translates this expression "surnames," but the word *surnosme*, (surname) is used by Britton immediately after.

**NOSMEMENT.** L. Fr. Namely. *Yearb. M.* 2 Edw. III. 19.

**NOSOCOMUS.** Græco-Lat. [Gr. νοσος, from νόσος, disease, and κομω, to take care.] In the civil law. One who had the care of a hospital. *Cod.* 3. 1. 46. 3. *Nov.* 7, epil.

**NOSTRUM.** • Lat. Ours; our own. *Id quod nostrum est, sine facto nostro, ad alium transferri non potest.* That which is ours cannot, without our act, be transferred to another. *Dig.* 50. 17. 11.

**NOTA.** Lat. In the civil law. A mark or brand put upon a person by the law. 1 *Mackeld. Civ. Law*, 134, 135.

**NOTA.** L. Lat. In old English conveyancing. A note or memorandum of a charter or deed, drawn up preparatory to the execution of the charter itself. *Si autem dicant testes quod præsentibus fuerint confectioni notæ in quam utraque pars consentit, donator et donatorius, hoc sufficit ad probationem, licet præsentibus non essent ubi charta scripta fuit et assignata, [signata?]* But if the witnesses say that they were present at the making of the note, to which each party agreed, donor and donee, this is sufficient for proof, though they were not present when the charter was written and sealed. *Bract.* fol. 398. *Fleta*, lib. 6, c. 34, § 2.

A promissory note. 11 *Mod.* 340.

**NOTÆ.** Lat. In civil and old European law. Short hand characters or marks of contraction, in which one person wrote what was said by another, or in which the emperors' secretaries took down what they dictated. *Spelman. Calv. Lex.* See *Notarius*.

**NOTARE INFAMIA.** Lat. In the civil law. To mark or brand with infamy,

or disgrace. *Dig.* 3. 2. For a description of the persons who were so branded, (*de his qui notantur infamia*,) see *Id. ibid.*

**NOTARIAL.** Belonging to a notary; made or done by a notary.

**NOTARIUS.** Lat. [from *nota*, a character or mark.] In Roman law. A person (sometimes a slave) who wrote in short hand (*notis*,) what was dictated by another. *Dig.* 29. 1. 40, pr. *Id.* 40. 5. 41. 3. *Cod.* 7. 7. 1. 5. *Brissonius. Calv. Lex.*

An officer who attended on a magistrate, and took down, in short hand, (*notis excipiebat*,) what was said or done. *Adam's Rom. Ant.* 188.

In feudal law. An officer who drew up conveyances and other instruments. *Feud. Lib.* 2, tit. 52, § 1.

In old English law. A scribe or scrivener who made short draughts of writings and other instruments; a notary. *Cowell.*

**NOTARY, (or NOTARY PUBLIC.)** A public officer by or before whom various acts, chiefly in mercantile matters, are required to be done; such as the protest of negotiable paper, marine protests in cases of loss, and the acknowledgment of certain instruments; and who attests or certifies the same in writing, under his official seal. See *United States Digest*, Notary Public.

The word *notary* itself is evidently formed from the *notarius* (q. v.) of the Roman law; but the functions of the office have been chiefly derived from those of the Roman *tabellio*, (q. v.) For a valuable sketch of the history of the office, see *Anthon's Law Student*, 33—46. And see *Bell's Dict.*

**NOTE, (or PROMISSORY NOTE, sometimes called a NOTE OF HAND.)** In mercantile law. A written promise by one person to another, [or by a corporation,] for the payment of money absolutely, and at all events. 3 *Kent's Com.* 74. *Bayley on Bills*, 1. *Story on Notes*, § 1. See *Promissory note, Bank note.*

**NOTE OF A FINE.** In old conveyancing. One of the parts of a fine of lands, being an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land and the agreement. 2 *Bl. Com.* 351.

"NOTE or MEMORANDUM," in the statute of frauds, imports an informal writing made on the spot, in the moment and hurry and tumult of commercial business.

Kent, C. 14 *Johns. R.* 484, 492. Hence, if written with a lead pencil, it has been held sufficient. *Id. ibid.*

**NOTE OF PROTEST.** A memorandum of a protest made by a notary, preliminary to drawing up the protest in form, or *extending* it, as it is termed.

**NOT GUILTY.** [L. Lat. *non culpabilis*; L. Fr. *nient culpable*.] In pleading. The general issue in the action of trespass, by which the defendant "says that he is *not guilty* of the said supposed trespasses above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him," &c. 2 *Burr. Pr.* Appendix, 340.

The general issue or plea pleaded by a prisoner, to an indictment on which he has been arraigned. 4 *Bl. Com.* 338.

In practice. The form of the verdict in criminal cases, where the jury acquit the prisoner. 4 *Bl. Com.* 361.

**NOTHUS.** Græco-Lat. [Gr. *νόθος*.] In civil and old English law. A natural child. *Nov.* 89. A bastard or illegitimate child. See *Tayl. Civ. Law*, 271. *Calv. Lex.* Properly, the offspring of an adulterous connection; (*notho mæchus-dedit ortum*.) *Co. Litt.* 244 a.

**NOTICE.** [from Lat. *notitia*, q. v.] In practice. A making known of something. Information of an *act done*; as of a suit commenced, bail put in, a rule entered, a partnership formed, a note protested, &c.

Information of an *act to be done*, or *required to be done*; as of a motion to be made, a trial to be had, a plea or answer to be put in, costs to be taxed, &c.

In practice, all notices are required to be in writing, dated, addressed to the party for whom they are intended, and signed by the party, or his attorney, by whom they are given. See *United States Digest*, Notice.

Knowledge. "A *bonâ fide* holder, without notice." Clifford, J. 20 *Howard's R.* 365.

**NOTICE OF MOTION.** In practice. A notice in writing, entitled in a cause, dated and signed by the attorney of the party in whose behalf it is given, and addressed to the opposite party or his attorney; stating that, on a certain day designated, a motion will be made to the court for the purpose or object stated.

**NOTICE TO PLEAD.** In practice. A notice in writing, requiring the defend-

ant in an action to plead within a certain time specified. *Chitt. Arch. Pr.* 152. 3 *Chitt. Gen. Pr.* 498.

**NOTICE TO PRODUCE.** In practice. A notice in writing, given in an action at law, requiring the opposite party to produce a certain described paper or document at the trial. *Chitt. Arch. Pr.* 230. 3 *Chitt. Gen. Pr.* 834.

**NOTICE OF PROTEST.** A notice given by a notary to the drawer or indorser of a bill, or the indorser of a note, that the bill or note has been protested for non-acceptance or non-payment.\* But the giving of this notice has been held to be no part of the official duty of a notary, unless rendered so by statute. 2 *Hill's (N. Y.) R.* 227. No particular form of words is necessary in a notice of protest; all that is necessary is to apprise the party of the dishonor of the bill or note. The essential requisites of the notice are, a true description of the note; an assertion that it has been duly presented at maturity, and dishonored; and that the holder looks to the person to whom notice is given, for indemnity. 1 *Wisconsin R.* 264. As to the description of the note or bill, see 17 *Howard's R.* 606, 608. And see 1 *Comstock's R.* 413. 2 *Selden's R.* 19.

**NOTICE TO QUIT.** A notice in writing, given by a landlord to his tenant from year to year, requiring the latter to quit and deliver up the possession of the premises on a day specified. 1 *Chitt. Gen. Pr.* 483, and note.

A notice given by a tenant from year to year to his landlord, of his intention to quit the premises on a day named. *Id. ibid.*

A notice given by a landlord to a tenant at will or by sufferance, requiring him to remove from the premises. 1 *N. Y. Rev. St.* [745,] 737, § 7.

**NOTICE OF TRIAL.** In practice. A notice in writing, given by the plaintiff in an action at law, or his attorney, to the defendant or his attorney, entitled in the cause, and properly dated, addressed and subscribed; stating that the cause will be brought to trial at the next term or sittings of the court.

**NOTIO.** Lat. [from *noscere*, to know.] In the civil law. The power of hearing and trying a matter of fact; the power or authority of a *judex*; the power of hearing causes and of pronouncing sentence, without any degree of jurisdiction. *Hal-*

*lifaz*, Anal. b. 3, ch. 8, num. 3, 6. *Calv. Lex.*

In a more general sense, *notio* included both *cognitio*, (cognizance,) and *jurisdictio*, (jurisdiction.) *Dig.* 50. 16. 99, pr. *Calv. Lex.*

NOTITIA. Lat. [from *notus*, known, or *noscere*, to know.] In the civil law. Knowledge; information; intelligence.

In old practice. Notice. *Inde notitiam habuit*; had notice thereof. 1 *Ld. Raym.* 70, 71. *Notitia non debet claudicare*; notice ought not to be lame or imperfect. 6 *Co.* 29 b, *Green's case*.

NOTORIAL. The Scotch form of notarial, (q. v.) *Bell's Dict.*

NOTOUR. Sc. In Scotch law. Open; public; notorious; as *notour* adultery, *notour* bankruptcy. *Bell's Dict. vocc. Adultery, Bankrupt.*

NOUN. L. Fr. [Lat. *non*.] Not; no. *Est ceo vostre fait ou noun*; is this your deed or not. *Yearb.* T. 1 Edw. II. 8. *Noun sire*; no, sir. *Id.* T. 1 Edw. II. 13.

NOUN. L. Fr. [Lat. *nomen*.] Name; a name. *Fet Assaver*, § 33.

Nova constitutio futuris formam imponere debet, non præteritis. A new statute or enactment ought to prescribe form to future acts, not to those that are past. 2 *Inst.* 292. A legislative enactment ought to be prospective in its operation, and not retrospective. *Broom's Max.* 14, [28.] See *Omnia nova*, &c.

NOVA STATUTA. L. Lat. New or later statutes. A name given to the English statutes from the beginning of the reign of Edward III. 3 *Reeves' Hist. Eng. Law*, 143.

NOVÆ NARRATIONES. L. Lat. New counts or tales; in old English, new *talys*. 3 *Bl. Com.* 297. A collection of forms, published in the reign of Edward III. containing the pleadings in the actions then in practice. It consists principally of declarations, as the title indicates, but occasionally of pleas and subsequent pleadings. 3 *Reeves' Hist. Eng. Law*, 151, 152. *Crabb's Hist.* 330.

NOVALE. Lat. Land newly ploughed, or that had not been tilled before within the memory of man. *Cowell. Spelman.*

NOVALIS. Lat. [from *novus*, new.] In the civil law. Land that rested a year after the first ploughing. *Dig.* 50. 16. 30. 2.

NOVATIO. Lat. [from *novare*, to make new, from *novus*, new.] In the civil law.

Literally, a making new. A change of a former debt or obligation into another of the same or a different kind, either by a change of the persons, called *delegatio*, (q. v.) or by a change in the obligation, the persons continuing the same. *Inst.* 3. 30. 3. *Dig.* 46. 2. *Cod.* 8. 42. *Halifax, Anal.* b. 2, ch. 20, num. 8. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 30, § 1011, et seq. This term, translated or converted into *novation*, is extensively used in modern civil law, and in the jurisprudence of Holland, Spain, France, Scotland and the state of Louisiana. *Burge on Suretyship*, 166. Called in *Fleta*, *innovatio*. *Fleta*, lib. 2, c. 60, § 12.

Novatio non præsumitur. Novation is not presumed. *Halk. Max.* 109.

NOVATION. [from Lat. *novatio*, q. v.] In modern civil and general law. A change of one debt or obligation into another; a substitution of a new debt or obligation for an old one. *Story on Bills*, § 441. *Burge on Suretyship*, 166. 19 *Johns. R.* 129, 133. The substitution of a new bill of exchange in lieu of, and taking up the old bill, is a familiar example of *novation*. *Story on Bills*, § 441. Called in Scotch law, *innovation*, (q. v.)

NOVEL. L. Fr. New; recent. *De novel*; anew. *Kelham. Novel assignment*; a new assignment, (q. v.) *Novel disseisin*; recent disseisin. See *Assise of novel disseisin*. *Un novel trial*; a new trial. *T. Jon.* 163.

NOVELLÆ, (or NOVELLÆ CONSTITUTIONES.) New Constitutions; generally translated in English, *Novels*. The Latin name of those constitutions which were issued by Justinian after the publication of his Code; most of them being originally written in Greek, and published under the name of *Νεαπαὶ Διατάξεις*. After his death, a collection of 168 Novels was made, 154 of which had been issued by Justinian, and the rest by his successors. These were afterwards included in the *Corpus Juris Civilis*, (q. v.) and now constitute one of its four principal divisions. 1 *Mackeld. Civ. Law*, 59, § 71. *Tayl. Civ. Law*, 22. 1 *Kent's Com.* 541. See *Authentic*.

NOVELS. The title given in English to the New Constitutions (*Novellæ Constitutiones*) of Justinian and his successors, now forming a part of the *Corpus Juris Civilis*. 1 *Kent's Com.* 541. 1 *Bl. Com.* 81. See *Novellæ*.

NOVERCA. Lat. In the civil law. A stepmother. *Inst.* 1. 10. 7. *Dig.* 38. 10. 4. 6.

NOVERINT UNIVERSI. L. Lat. Know all men. Introductory words of conveyances in England, from a very early period. *Fleta*, lib. 2, c. 64, § 3.

NOVERINT UNIVERSI PER PRÆSENTES. L. Lat. Know all men by these presents. Words with which deeds, obligations, letters of attorney and other instruments were formerly commenced. *Litt.* sect. 445. *West's Symboleog.* pars 1, lib. 2, sect. 102, 518, 522—525.

NOVI OPERIS NUNCIATIO. Lat. In the civil law. A protest against, or prohibition of a new work. Where a person began to build up or to pull down something, (which was technically called *novum opus*, a new work,) another person, who feared that his right would be impaired thereby, might extra-judicially hinder the completion of the work, by *protesting* before the workmen on the spot, or before some one present representing the owner, against the prosecution of the work, and *forbidding* the same. *Dig.* 39. 1. *Id.* 43. 24. *Cod.* 8. 11. See *Opus novum*.

NOVIGILD. [from Lat. *novem*, nine, and Sax. *gild* or *geld*, a payment.] In Saxon law. A pecuniary satisfaction for an injury, amounting to nine times the value of the thing for which it was paid. *Spelman*, voc. *Geldum*.

NOVISIMA RECOPIACION. Span. (Latest compilation.) The title of a collection of Spanish law compiled by order of Don Carlos IV. in 1805. 1 *White's Recop.* 355. 2 *Id.* 99. *Schmidt's Civ. Law*, Introd. 81—85.

NOVITER AD NOTITIAM PERVENTA. L. Lat. Newly come to the knowledge. A phrase in the practice of the ecclesiastical courts. 3 *Hagg. R.* 365.

NOVITAS. Lat. Novelty; newness. *Novitas non tam utilitate prodest quam novitate perturbat.* A novelty does not benefit so much by its utility, as it disturbs by its novelty. *Jenk. Cent.* 167, case 23.

NOVODAMUS. L. Lat. In old Scotch law. (We give anew.) The name given to a charter or clause in a charter, granting a renewal of a right. *Bell's Dict.*

Novum judicium non dat jus novum, sed declarat antiquum. A new judgment does not give or make new law, but declares the old. 10 *Co.* 42 a, *Mary Portington's case*.

NOVUM OPUS. Lat. In the civil law. A new work. See *Novi operis nunciatio*, *Opus novum*.

NOVUS. Lat. New. *Novis injuriis emersis, nova constituuntur remedia*; as new injuries arise, new remedies are ordained. *Fleta*, lib. 2, c. 2, § 1.

N'R. A contraction of *noster*. *N'ri*, of *nostri*; *N'rum*, of *nostrum*. 1 *Inst. Cler.* 11.

NOW. Present. "The now plaintiff." 9 *Mod.* 31.

"NOW," in a will, is to be referred to the date of the will, and not to the death of the testator. 1 *Jarman on Wills*, 277, 278, (290, Perkins' ed. 1849.) See 1 *P. Wms.* 597.

NOXA. Lat. [from *nocere*, to hurt.] In the civil law. A slave who had committed an offence, or done any damage or injury. *Noxa est ipsum corpus quod nocuit, id est servus*; *Noxa* is the body or person itself that has done the harm, that is, the slave. *Inst.* 4. 8. 1.

The obligation to make good an injury committed by a slave, and which followed the person of the slave, (*Noxa sequitur caput*.) *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 8, § 1231.

An offence, (*delictum*.) *Dig.* 50. 16. 238. 3. *Calv. Lex.* Held to be a more general word than *delictum*. *Id.*

The punishment of an offence. *Id.*

NOXALIS ACTIO. Lat. In the civil law. An action which lay against the master of a slave, for some offence (as theft or robbery,) committed, or damage or injury done by the slave, who was called *noxa*, (q. v.) *Inst.* 4. 8, pr. 5. *Dig.* 9. 4. *Cod.* 3. 41. Usually translated *noxal action*. *Cooper's Transl. ibid.*

NOXIA. Lat. In the civil law. An offence committed, or damage done by a slave, or an animal. *Dig.* 9. 1. 1. 1. *Inst.* 4. 8. 1.

NOXIOUS. [Lat. *nocivus*, q. v.] Hurtful; offensive; offensive to the smell. 1 *Burr.* 337. The word *noxious* includes the complex idea both of insalubrity and offensiveness. *Denison, J. Id. ibid.*

Nuda pactio obligationem non parit. A naked promise does not create an obligation. *Dig.* 2. 14. 7. 4. *Broom's Max.* [584.] *Nuda ratio et nuda pactio non ligant aliquem debitorem*; naked reason and naked promise do not bind any debtor. *Fleta*, lib. 2, c. 60, § 25.

NUDE PACT. A common translation

of the Lat. *nudum pactum*, (q. v.) 2 *Bl. Com.* 445. 2 *Kent's Com.* 464. A contract without a consideration. *Id. ibid.* A mere promise without mutuality. 12 *Howard's R.* 126.

NUDUM. Lat. Naked; bare; simple; pure; having nothing about it; unclothed with any circumstance. See *Nudum pactum*.

NUDUM PACTUM. Lat. In the civil law. A naked, bare or mere pact, or promise; one that stands within the bare limits of convention and pleasure, (*quod in nudis placiti et conventionis finibus subsistit.*) *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 777. One that has nothing about it, either special name or cause, (consideration,) or contract wherewith to cover it. *Calv. Lex.* citing *Bartolus* and others. A pactum or pact, it will be observed, was not a contract in the technical sense of the words. *Heinecc. El. J. C.* lib. 3, tit. 14, §§ 774, 775, 776. See *Pactum*.

Bracton uses the phrase *nudum pactum*, though he gives to *pactum* the broader sense of *contract*, making in fact little distinction between them. He distinguishes pacts or agreements into such as were naked, (*nuda*;) and such as were clothed, (*vestita*;) and enumerates in a Latin couplet the six kinds of *vestments*, (*vestimenta*;) or clothing, which were essential to give them legal efficacy. *Bract.* fol. 16 b, 99. *Fleta*, lib. 2, c. 56, § 4.

In modern law, *nudum pactum* is constantly used to denote a contract without consideration. 2 *Bl. Com.* 445. 2 *Kent's Com.* 464. This is founded on the broad terms of the civil law,—(*nudum pactum* [or rather *nuda pactio*] *est ubi nulla subest causa præter* [*propter*] *conventionem*;) without reference to the stricter and technical meaning of the words. *Dig.* 2. 14. 7. 4. *Plowd.* 309 a. *Broom's Max.* 336, [583.] See 1 *Spence's Chancery*, 186, note (f).

Ex nudo pacto non oritur [nascitur] actio. Out of a naked pact or promise, no action arises. *Cod.* 2. 3. 10. *Id.* 5. 14. 1. *Bract.* fol. 99. *Fleta*, lib. 2, c. 56, § 3. A *nudum pactum*, in the civil law, afforded no ground for an action, but it might be the subject of an exception or plea; (*Nuda pactio obligationem non parit, sed parit exceptionem.*) *Dig.* 2. 14. 7. 4. *Heinecc. El. J. C.* lib. 3, tit. 14, § 777.

NUE. L. Fr. Nude; naked; bare. *Ascun* [*contracte*] *est nue, et sauns garnement, et ascun vestue*; one kind of con-

tract is naked and without clothing, and another kind is clothed. *Britt.* c. 28.

NUEVA RECOPIACION. Span. (New Compilation.) The title of a code of Spanish law, promulgated in the year 1567. *Schmidt's Civ. Law*, Introd. 79—81.

NUICTANTER. L. Fr. By night. *Yearb.* M. 9 Edw. III. 17.

NUISANCE, *Nusance*. [from L. Fr. *noysaunce*, *nosaunce*, (q. v.); L. Lat. *nocumentum*.] Annoyance; any thing that worketh hurt, inconvenience or damage. 3 *Bl. Com.* 215. *Hale's Anal.* sect. xlii.—Annoyance done to one's hereditament. *Finch's Law*, b. 3, c. 2.—Any thing that annoys, incommodes or offends; any thing that renders the enjoyment of life and property uncomfortable. See 9 *Co.* 58 a, *William Aldred's case*. Lord Mansfield, 1 *Burr.* 337. Cowen, J. 5 *Hill's* (N. Y.) *R.* 121, 123. See *United States Digest*, Nuisance. See *Common nuisance*, *Private nuisance*.

NUISANCE, *Assise of*. In old practice. A judicial writ directed to the sheriff of the county in which a nuisance existed, in which it was stated that the party injured complained of some particular fact done *ad nocumentum liberi tenementi sui*, (to the nuisance of his freehold,) and commanding the sheriff to summon an assise, (that is, a jury) to view the premises, and have them at the next commission of assises, that justice might be done, &c. 3 *Bl. Com.* 221.

A writ of nuisance modelled after this assise, has been in occasional use in American practice, but it has been deemed obsolete by the courts, and not encouraged. 17 *Wendell's R.* 441. 1 *Denio's R.* 436. The modern remedy for a nuisance, both in England and the United States, is an action on the case.

NUL. L. Fr. [from Lat. *nullus*.] No; none. See *infra*.

NUL DISSEISIN. L. Fr. (No disseisin.) In old practice. The general issue in a real action. 3 *Bl. Com.* 305. Lord Coke unites it with *nul tort*, as the general issue in assise. *Co. Litt.* 283 a. *Roscoe's Real Act.* 227.

NUL AGARD, (no award;) NUL FAIT AGARD, (no award made.) L. Fr. In practice. The name of a plea denying that an award has been made. *Billing on Awards*, 279, 281.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong. 2 *Inst.* 713. *Branch's*

*Pr.* A wrongful or fraudulent act shall not be allowed to conduce to the advantage of the party who committed it. *Broom's Max.* 322, [217.]

**NUL TIEL RECORD.** L. Fr. (No such record.) In practice. The general plea in an action of debt upon matter of record, (as upon a judgment,) denying its existence. 2 *Tidd's Pr.* 742.

The name of the replication to a plea of matter of record. *Id. ibid.*

The issue rising upon a plea or replication of *nul tiel record.* *Id. ibid.*

**NUL TORT.** L. Fr. (No wrong.) In old practice. A species of general issue in a real action or assise. 3 *Bl. Com.* 305. See *Nul disseisin.*

**NUL WAST FAIT.** L. Fr. (No waste done.) In old practice. The general issue in an action of waste. *Roscoe's Real Act.* 242. *Co. Litt.* 283 a.

**NULL.** [from Lat. *nullus*, none.] Naught; of no validity or effect. Usually coupled with the word void, as "null and void."

**NULLA BONA.** L. Lat. (No goods.) In practice. The technical name of the return made by a sheriff to a writ of *feri facias*, where the party named in the writ has no property which can be levied on. 2 *Tidd's Pr.* 1018. 1 *Arch. Pr.* 279. Derived from the emphatic words of the old return.

*Nulla curia quæ recordum non habet, potest imponere finem, neque aliquem mandare carceri.* No court which has not a record can impose a fine, or commit any one to prison. 8 *Co.* 61 a, *Beecher's case.*

*Nulla impossibilia, aut inhonesta sunt præsumenda; vera autem, et honesta et possibilia.* No things that are impossible or dishonorable are to be presumed; but things that are true and honorable and possible. *Co. Litt.* 78 b.

*Nulla pactione effici potest ut dolus præstetur.* By no agreement can it be effected that a fraud shall be practised. Fraud will not be upheld, though it may seem to be authorized by express agreement. 5 *M. & S.* 466. *Broom's Max.* 309, [545.]

*Nulle terre sans seigneur.* No land without a lord. A maxim of feudal law. *Guyot, Inst. Feod.* ch. 28.

**NULLITY.** Want of legal efficacy.

Nothing; no proceeding; an act or proceeding in a cause, which the opposite party may treat as though it had not taken place.

**NULLIUS FILIUS.** Lat. [L. Fr. *nully fitz.*] A son of nobody; a bastard. See *Filius nullius.*

*Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit.* The authority of no man ought to prevail with us, so far as to prevent our following better [opinions,] if any one should present them. *Co. Litt.* 383 b.

**NULLIUS IN BONIS.** Lat. Among the property of no person; not a subject of private property. *Dig.* 1. 8. 1. See *In nullius bonis.*

**NULLIUS JURIS.** Lat. In old English law. Of no legal force. *Fleta*, lib. 2, c. 60, § 24.

*NULLI VENDEMUS, NULLI NEGABIMUS, AUT DIFFEREMUS RECTUM, AUT JUSTITIAM.* To no one will we sell, to no one will we deny or delay right or justice. *Magna Charta, Johan.* c. 40. This clause occurs in the same words in the charter of 1 Hen. III. c. 33, and in the charter A. D. 1217, c. 36. In the charter of 9 Hen. III. c. 29, the reading is *vel justitiam*. In the original articles of Magna Carta, (c. 30,) the demand was, *NE JUS VENDATUR, VEL DIFFERATUR, VEL VETITUM SIT.* See this clause variously quoted. *Dyer*, 104 b. 1 *P. Wms.* 226. 2 *Vern.* 498.

**NULLUM ARBITRIUM.** L. Lat. In old pleading. No award. 8 *Mod.* 212.

*Nullum crimen majus est inobedientia.* No crime is greater than disobedience. *Jenk. Cent.* 77, case 48. Applied to the refusal of an officer to return a writ. *Id.*

*Nullum exemplum est idem omnibus.* No example is the same for all purposes. *Co. Litt.* 212 a. No one precedent is adapted to all cases. A maxim in conveying.

*Nullum iniquum est præsumendum in jure.* Nothing unjust is to be presumed in law. 4 *Co.* 72 a. Cruel, oppressive or tortious conduct will not be presumed. *Best on Evid.* 336, § 298. Another form is *Nullum iniquum in jure præsumitur.* See *Freem.* 82.

*Nullum simile est idem.* No like thing is the same. 2 *Bl. Com.* 162. Similarity is not identity.\* To hold an estate as a freehold, is not to have a freehold. 2 *Bl. Com. ub. sup.* A check nearly resembles a bill of exchange, but it is not the same thing. *Story, J.* 2 *Story's R.* 512. Partnership resembles both joint-tenancy and tenancy in common, yet it differs from both

in important particulars. *Story on Partn.* § 90.

**Nullum simile quatuor pedibus currit.** No simile runs upon four feet, (or *all fours*, as it is otherwise expressed.) No simile holds in every thing. *Co. Litt.* 3 a. *Eunomus*, Dial. 2, p. 155. *Story*, J. 2 *Story's R.* 143.

**NULLUM TEMPUS ACT.** The statute of 9 Geo. III. c. 16, so called. *Perk.* ch. 1, sect. 29, note.

**Nullum tempus occurrit regi.** No time bars (or runs against) the king. Otherwise expressed, **Nullum tempus nec locus occurrit regi.** 2 *Inst.* 273. *Jenk. Cent.* 83, case 62. Lapse of time does not bar the right of the crown. *Broom's Max.* 27, [46.] The law determines that in the king can be no negligence or *laches*, and therefore no delay will bar his right. 1 *Bl. Com.* 247. See 2 *Id.* 259, 277. This maxim seems to have been derived from the **Nullum tempus currit contra regem**, of Bracton. *Bract.* fol. 103, 56. See *Currere*. It has been largely qualified by statute in modern times, and indeed has always been subject to exceptions. *Broom's Max.* 28, [47.] *Currit tempus contra regem sicut contra quamlibet privatam personam*; time (in certain cases) runs against the king, as against any private person. *Bract.* fol. 14, 56. This maxim, under the form **Nullum tempus occurrit reipublicæ**, (q. v.) has been applied, in some of the United States, to rights of action on the part of the government. See 2 *Hilliard's Real Prop.* 173. 11 *Grattan's R.* 572. 5 *Texas R.* 410. 16 *Id.* 305. 5 *McLean's R.* 133. 19 *Missouri R.* 607.

**Nullum tempus occurrit reipublicæ.** No time runs [time does not run] against the commonwealth or state. 11 *Grattan's R.* 572.

**NULLUS.** Lat. No; no person. See *infra*.

Null; void; of no force.

**Nullus commodum capere potest de injuria sua propria.** No man [shall] can take advantage of his own wrong. *Co. Litt.* 148 b. *Broom's Max.* [209.]

**Nullus idoneus testis in re sua intelligitur.** No person is understood to be a competent witness in his own cause. *Dig.* 22. 5. 10. *Story*, J. 1 *Sumner's R.* 328, 344. See **Nemo in propria causa testis**, &c.

**Nullus jus alienum forisfacere potest.** No man can forfeit another's right. *Fleta*, lib. 1, c. 28, § 11.

**Nullus videtur dolo facere, qui suo jure utitur.** No man is considered a wrongdoer, who avails himself of his own right. *Dig.* 50. 17. 55. *Broom's Max.* [95.]

**NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, AUT DISSEISIETUR DE [ALIQUO] LIBERO TENEMENTO SUO, VEL LIBERTATIBUS VEL LIBERIS CONSUETUDINIBUS SUIS, AUT UTLAGETUR, AUT EXULETUR, AUT ALIQUO [ALIO] MODO DESTRUATUR, NISI PER LEGALE JUDICIUM PARIUM SUORUM, VEL PER LEGEM TERRÆ.** No freeman shall be taken or imprisoned, or disseised of [any] his freehold, or his liberties or free customs, or be outlawed, or exiled, or in any [other] manner destroyed, unless by the lawful judgment of his peers, or by the law of the land. *Magna Charta*, 9 Hen. III. c. 29. The most celebrated clause in *Magna Charta*, and the substance of which has been incorporated into the constitutions, or bills of rights, of most of the United States.

\* \* The above extract is taken from the Charter of 9 Henry III. The Charter of King John presents quite a different reading. It may be interesting to trace the clause through the different forms it took in the different charters, as they were granted by John and Henry III.

Before the Charter had been extorted from King John, or even its articles agreed upon, the king offered to refer all differences between him and his barons to the Holy See and eight other arbitrators. The letters patent by which the offer was made, contained the following clause: **SCIATIS NOS CONCESSISSE BARONIBUS NOSTRIS QUI CONTRA NOS SUNT, QUOD NEC EOS, NEC HOMINES SUOS, CAPIEMUS NEC DISSEISIEMUS, NEC SUPER EOS PER VIM VEL PER ARMA IHIMUS, NISI PER LEGEM REGNI NOSTRI, VEL PER JUDICIUM PARIUM SUORUM IN CURIA NOSTRA, &c.** (Know ye, that we have granted to our barons who are against us, that we will neither take nor disseise them, nor their men, nor will we go upon [proceed against] them by force or by arms, unless by [in accordance with] the law of our realm, or by the judgment of their peers in our court, &c.) *Pat.* 16 *Johan.* pars 1, m. 3, d. n. 2. *Blackst. Mag. Cart.* Introd. xxi. The words of this instrument appear to have been had in view in drawing the original Articles of King John's Charter, the twenty-ninth chapter of which stipulates as follows:

**NE CORPUS LIBERI HOMINIS CAPIATUR,**

NEC IMPRISONETUR, NEC DISSAISIETUR, NEC UTLAGETUR, NEC EXULETUR, NEC ALIQUO MODO DESTRUATUR; NEC REX EAT VEL MITTAT SUPER EUM VI, NISI PER JUDICIUM PARIUM SUORUM, VEL PER LEGEM TERRÆ. (That the body of a freeman shall not be taken, nor imprisoned, nor disseised, nor outlawed, nor exiled, nor in any manner destroyed; nor shall the king go or send upon him by force, [i. e. shall not himself forcibly proceed against him, nor send others to proceed in his name,] unless by the judgment of his peers, or by the law of the land.) *Artic. Mag. Cart. Johan.* c. 29. In the Charter, as actually granted by the king, the words of the articles are as follows:

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, AUT DISSAISIATUR, AUT UTLAGETUR, AUT ALIQUO MODO DESTRUATUR; NEC SUPER EUM IBIMUS, NEC SUPER EUM MITTEMUS, NISI PER LEGALE JUDICIUM PARIUM SUORUM, VEL PER LEGEM TERRÆ. (No freeman shall be taken, or imprisoned, or disseised, or outlawed, or in any manner destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.) *Mag. Cart. Reg. Johan.* c. 39. In the Charter of 1 Henry III. no other change was made than the addition of two words, as in the following:

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, VEL DISSAISIATUR, AUT UTLAGETUR, [AUT EXULET,] AUT ALIQUO ALIO MODO DESTRUATUR, &c. *Mag. Cart.* 1 Hen. III. c. 32. In the Charter of Hen. III. dated A. D. 1217, some additional words were introduced, more fully expressive of disseisin, as follows:

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, AUT DISSAISIETUR DE LIBERO TENEMENTO SUO, VEL LIBERTATIBUS VEL LIBERIS CONSUETUDINIBUS SUIS, AUT UTLAGETUR, AUT EXULETUR, AUT ALIQUO ALIO MODO DESTRUATUR, &c. (No freeman shall be taken, or imprisoned, or disseised of his freehold, or of his liberties or free customs, or outlawed, or exiled, or in any other manner destroyed, &c.) *Cart. Hen.* III. A. D. 1217, c. 35. This is in nearly the same words with the Charter of 9 Hen. III. first above quoted.

The expression NEC SUPER EUM IBIMUS, NEC SUPER EUM MITTEMUS, in King John's Charter, (omitted in that of 9 Hen. III.) has been made the subject of considerable criticism. See the argument of Mr. Sel-

den before parliament, on the liberty of the subject. 3 *State Trials*, 18, 79. Its meaning, however, seems to be sufficiently explained by the other instruments above quoted. The expression VEL PER LEGEM TERRÆ, has also occasioned much discussion. See *Lex terræ*.

Nullus recedat e curia cancellaria sine remedio. No person should depart from the court of chancery without a remedy. 4 *Hen.* VII. 4. *Branch's Princ.*

NULLUY, *Nuly*, *Nullui*. L. Fr. None; no one. *En nuly biens*; in no one's goods, (*in nullius bonis*.) *Kelham*.

NUMERATA PECUNIA. Lat. In the civil law. Money told or counted; money paid by tale. *Inst.* 3. 24. 2. *Bract.* fol. 35.

NUMMATA TERRÆ. L. Lat. In old records. A quantity of land, thought to contain an acre. *Cowell*.

NUMMULARIUS. Lat. [from *nummus*, money.] In the Roman law. A money-lender, or money-changer; a banker. *Cod.* 11. 17. 1, pr. *Adam's Rom. Ant.* 546. See *Argentarius*.

NUMMUS. Lat. Money. Commonly derived from Gr. *νόμος*, law, as being originally established by law. *Co. Litt.* 207 b. But Calvin prefers to derive it from *numerus*, number. *Calv. Lex*.

NUNC PRO TUNC. L. Lat. In practice. Now for then. A term applied to such acts (as the entry of a judgment) as are allowed to be done after the time when they should have been done, and with the same effect as if they had been done at the proper time; the doing of the act *now*, (*nunc*,) that is, at the time when it is actually done, being allowed to pass as a substitute and equivalent for (*pro*) doing it *then* (*tunc*,) or before. 1 *Stra.* 639. 2 *Tidd's Pr.* 932. See 1 *Williams on Exec.* 762, 763.

NUNCIATIO, *Nuntiatio*. Lat. In the civil law. A solemn declaration, usually in prohibition of a thing; a protest. *Dig.* 39. 1. See *Novi operis nunciatio*.

NUNCUPARE. Lat. In the civil law. To name; to pronounce orally, or in words without writing. *Nuncupare hæredem*; to name one's heir *viva voce*, before witnesses. *Calv. Lex*.

NUNCUPATIVE WILL. A will or testament orally made or declared before witnesses, and afterwards reduced to writing; a will not made in writing; an un-

written will.\* 2 *Bl. Com.* 500. A term derived from the civil law. See *Nuncupare*.

Nuncupative wills have been recently abolished in England, by statute 1 Vict. c. 26, § 9, with an exception in the case of soldiers in actual military service, and mariners and seamen at sea. *Id.* § 11. See 1 *Williams on Exec.* 96. This is in accordance with the present law in New-York. 2 *N. Y. Rev. Stat.* [60,] 4, § 22. As to the law in other states, see 1 *Jarman on Wills*, (Perkins' ed. 1849,) 130, 131, notes. *United States Digest*, Will. Nuncupative wills have never been regarded with favor by the courts, and when they are allowed, much greater strictness is required in the proof of them than in the proof of written wills. See 27 *Mississippi R.* 119.

NUNDINÆ. Lat. In civil and old English law. A fair; fairs. *Dig.* 50. 11. *Cod.* 4. 60. *In nundinis et mercatis*; in fairs and markets. *Bract.* fol. 56. *Fleta*, lib. 2, c. 63, § 7; c. 64, § 23.

NUNQUAM. Lat. Never. *Nunquam fait ballivus ejus, vel mercator, vel denariorum suorum receptor, vel administrator*; never was his bailiff or merchant, or receiver of his moneys, or his administrator (manager.) *Fleta*, lib. 2, c. 70, § 9. See *infra*.

NUNQUAM INDEBITATUS. L. Lat. Never indebted. The name of the plea now substituted in England for *nil debet*, as the general issue in debt on simple contract. 3 *Steph. Com.* 577. 1 *Arch. Nisi Prius*, 202.

*Nunquam crescit ex postfacto præteriti delicti æstimatio*. The character of a past offence is never aggravated by a subsequent act or matter. *Dig.* 50. 17. 138. 1. A maxim adopted by Lord Bacon, with merely a change in the order of the words. *Bacon's Max.* 38, reg. 8. See *Æstimatio*.

*Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium*. We are never to resort to what is extraordinary, but where [until] what is ordinary fails. 4 *Inst.* 84.

*Nunquam præscribitur in falso*. There is never a [no] prescription in case of falsehood, or forgery. A maxim in Scotch law. *Bell's Dict.*

*Nunquam prospere succedunt res humanæ, ubi negliguntur divinæ*. Human things [affairs] never prosper where divine things are neglected. *Wingate's Max.* 6, max. 2.

NUNTIUS, *Nuncius*. Lat. In old

English practice. A messenger. One who was sent to make an excuse for a party summoned, or one who explained as for a friend (*quasi pro amico*;) the reason of a party's absence. *Bract.* fol. 345. This was not the same as an essoiner, (*essoniator*.) *Id. ibid.* 1 *Reeves' Hist.* 413.

An officer of a court; a summoner, apparitor or beadle. *Cowell*.

NUPER. Lat. Late; lately. *Nuper vicecomes*; late sheriff. *Nuper de facto, et non de jure, reges Angliæ*; lately kings of England in fact, and not of right. 1 *Bl. Com.* 204.

NUPER OBIT. L. Lat. (Lately died.) In old English practice. An ancestral writ brought to establish an equal division of land, where, on the death of an ancestor who had several heirs, one of them entered and held the others out of possession. 3 *Bl. Com.* 186. *F. N. B.* 197. *Roscoe's Real Act.* 127, 128. The name was derived from that clause of the writ which referred to the ancestor *qui nuper obiit, ut dicitur*, (who lately died, as is said.) *Reg. Orig.* 226.

NUPTIÆ. Lat. [from *nubere*, to cover or veil.] In the civil law. Marriage; nuptials; the union of man and woman; companionship for all life, (*conjunctio maris et feminae, et consortium omnis vitæ*.) *Dig.* 23. 2. 1. See *Cod.* 5. 4. Justinian uses *nuptiæ* and *matrimonium* as synonymous. *Inst.* 1. 9. 1. Properly, the nuptial ceremony. *Calv. Lex. Tayl. Civ. Law*, 269, 274. See *Consensus non*, &c.

NUPTIÆ SECUNDÆ. Lat. In the canon law. A second marriage; any marriage after the first. The canon law put a mark of disapprobation upon *nuptiæ secundæ*, for so they termed every marriage after the first; no benediction could be pronounced, nor could any priest be present at the celebration of them. *Corvin. Jus Canon.* 108, 109, 110. *Launc. Inst. Jur. Can.* lib. 2, tit. 16. 4 *Reeves' Hist.* 63.

NURUS. Lat. In the civil law. A son's wife, (*filii uxoris*;) a daughter-in-law. *Dig.* 38. 10. 4. 6. See *Id.* 50. 16. 50.

NUSANCE. The old form of *nuisance*. *Hale's Anal.* sect. xlii.

NUTAUNTRE, *Nutander, Nuictander*. L. Fr. By night. *Ou nutauntre ou de jour*; by night or by day. *Britt.* c. 47. *Yearb.* P. 10 Edw. III. 37.

NUYT, *Nute*. L. Fr. Night. *Britt.* c. 80.

## O.

O. C. An abbreviation, in the civil law, for *ope consilio*, (q. v.)

OATH. [O. Eng. *othe*; Sax. *ath*; Lat. *iuramentum*, *jusjurandum*, *sacramentum*; L. Fr. *serment*.] A declaration or promise, corroborated or confirmed by an appeal to God. A declaration or promise by a person, before an authorized officer, that what he has said or is about to say is true, or that he will faithfully do a certain act, or perform a certain duty; corroborated by an appeal to the Deity to witness the sincerity of the declaration.

A declaration or promise corroborated by an appeal to God, and accompanied by some outward manual act or form,—usually that of touching and kissing the gospels. See *Corporal oath*.

\* \* An oath may refer to something already *done*, or to something *to be done*. Thus, the oath of a *witness*, testifying orally, is that the evidence which he is *about* to give shall be the truth: the oath of a party making an *affidavit* is that what he *has* said is true; the oath of a *juror* is that he *will* try the issue between the parties and give a true verdict according to the evidence; the oath of *office* is that the party swearing *will* faithfully discharge its duties.

An oath, considered with reference to its words, obviously consists of two parts: a *declaration* of what the parties *will* do, or a declaration in reference to what he *has* done, and an *appeal* to the Deity by way of attestation or confirmation of it: the latter being expressed by the concluding clause, "So help you God," or "So help me God." In this appeal, the essence and force of the oath consist. Hence an oath is said by Paley to be "the calling upon God to witness, that is, to take notice of what we say, and invoking his vengeance, or renouncing his favor, if what we say be false, or what we promise be not performed." *Paley's Mor. Phil.* b. 3, c. 16. So, in *Rex v. White*, an oath is defined to be "a religious asseveration by which a person renounces the mercy and imprecates the vengeance of Heaven, if he do not speak the truth." 1 *Leach Cr. L.* 430. And this was the idea of an oath from the earliest period, it being defined by Britton to be "a judicial affirmation in any matter whereof a man is charged *on peril of his soul* to say the truth," (*en peril de sa alme a dire verite*.) *Britt. c.* 97. The imprec-

tion of vengeance, however, is rather implied than expressed, the true import of the words "So help me God" being, that the party puts his future and eternal welfare on the condition of what he says being the truth. "So," that is, in such event, "may God help or aid me," that is, be merciful to me hereafter. And this idea is more fully brought out in some of the older English forms: "So God me help *at the holy dome*," "So help me God *at his holy dome*," that is, the doom or judgment. See *Dome*, *So help me God*.

The act or ceremony by which the taking of an oath is accompanied and expressed, is now usually (as it has been from the earliest times) that of *laying the hand* upon and *kissing the gospels*; but in place of this, parties are often allowed to swear by *lifting up the right hand*, and in some cases, without any manual act whatever. 2 *N. Y. Rev. St.* [407, § 103.] 329, § 83. See *Kissing the gospels*, *Uplifted hand*. The importance of some act of this kind seems to be greater now than formerly, since, in modern practice, the party swearing (except in certain cases,) *says nothing*; the whole words of the oath being pronounced by the officer to whom it is administered, and all that the party himself does being merely in the way of *assent*. The entire form is far less impressive than that of the ancient practice, which placed the words of the oath in the party's own mouth, it being repeated in the first person throughout, and sometimes with peculiar solemnity. Thus the juror's oath on an assise was expressed as follows: "Hear this, ye justices, that I will speak the truth of this assise," &c. "and that for nothing will I omit to speak the truth. So help me God and these holy gospels." *Bract. fol.* 185. *Britt. c.* 52.

OB. Lat. For; on account of, (*propter*.) *Brissonius*.

About. *Festus*.

To, (in the sense of *ad*.) Used in this sense in the Twelve Tables. *Calv. Lex. Prateus*.

OB CAUSAM ALIQUAM A RE MARITIMO ORTAM. Lat. For some cause arising out of a maritime matter. 1 *Peters' Adm. Dec.* 92. Said to be Selden's translation of the French definition of admiralty jurisdiction, "*pour le fait de la mer*." *Id. ibid.*

OB CONTINENTIAM DELICTI. Lat. On account of the contaminating character

of the offence. *The Atalanta*, 6 *Rob. Adm. R.* 440. 1 *Kent's Com.* 152.

OB CONTINGENTIAM. Lat. In case of contingency. Lord Brougham, 7 *Bell's App. Cas.* 163.

OB FAVOREM MERCATORUM. Lat. In favor of merchants. *Fleta*, lib. 2, c. 63, § 12.

OB TURPEM CAUSAM. Lat. For an immoral consideration. *Dig.* 12. 5.

OBÆRATUS. Lat. In the Roman law. A debtor who was obliged to serve his creditor till his debt was discharged. *Adam's Rom. Ant.* 49.

OBDIENTIA. Lat. [from *obediens*, from *obedire*, to obey.] Obedience; submission. *Obedientia est legis essentia*. Obedience is the essence of law. 11 *Co.* 100 a, *Bagg's case*.

OBDIENTIA. L. Lat. In old records. A kind of rent. *Cowell*.

In the canon law. An office, or the administration of an office. *Id.*

OBIIT SINE PROLE. Lat. (He) died without issue. *Yearb. M.* 1 *Edw. II.* 1.

OBIT. [from Lat. *obitus*, death.] In old English law. A funeral solemnity, or office for the dead. *Cowell*.

The anniversary of a person's death; the anniversary office. *Id.* *Cro. Jac.* 51.

OBITER. Lat. [from *obire*, to pass.] By the way; in passing. "This point was not the principal question in the case of Clere and Brooke, but the law concerning it is delivered *obiter* only, and in the course of argument, by Justice Manwoode." 2 *Bl. Com.* 238.

OBITER DICTUM. L. Lat. An opinion of a judge delivered or expressed *by the way*, and not upon the point in question before him. 10 *Mod.* 209. Spencer, C. J. 18 *Johns. R.* 419. See *Dictum*.

OBLATI. L. Lat. In old European law. Voluntary slaves of churches or monasteries. 1 *Robertson's Charles V.* Appendix, Note xx.

OBLATI ACTIO. Lat. In the civil law. An action given to a party against another who had *offered* to him a stolen thing, which was found in his possession. *Inst.* 3. 1. 4.

OBLATIO. Lat. In the civil law. An offering or tender of money by a debtor to his creditor, in payment of the debt. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 30, § 1007.

OBLIGACION. L. Fr. Obligation. *Obligacion est un lien de droit*; obligation

is a bond of law. *Britt. c.* 28. See *Obligation*.

OBLIGATIO. Lat. In the civil and old English law. Obligation. Defined by Justinian to be "a bond of law, by which we are necessarily bound to pay something according to the laws of our country;" (*obligatio est juris vinculum quo necessitate astringimur alicujus rei solvendæ secundum nostræ civitatis jura.*) *Inst.* 3. 14, pr. See *Dig.* 5. 1. 20. *Id.* 44. 7. Bracton has adopted this definition with a modification which is an obvious improvement. *Obligatio est juris vinculum, quo necessitate astringimur ad aliquod dandum vel faciendum*; obligation is a bond of law, by which we are necessarily bound to give or to do something. *Bract. fol.* 99. *Fleta*, lib. 2, c. 56, § 1.

In old practice. A bond, or writing obligatory, (*scriptum obligatorium.*) 2 *Bl. Com.* 340.

OBLIGATION. [L. Fr. *obligacion*, from Lat. *obligatio*; from *obligare*, to bind.] Binding force or efficacy; binding force in law; a binding or state of being bound in law; the effect of an act in binding a person in law. Expressively called by Justinian, Bracton, Britton and Fleta, a *bond of law*, or legal chain or tie, (*vinculum juris*; *lien de droit*;) a chain or bond put upon a person by the law, compelling him to do some act. See *Obligatio*, *Obligacion*. A duty imposed by law, for the fulfilment of which one party is bound to another.\* The obligation of a contract is the duty to perform it. *Story's Conf. Laws*, § 266. The legal obligation of a contract is the right to performance which the law confers on one party, and the corresponding duty of performance to which it binds the other. *Id. ibid.* And see *Poth. Obl. pr.*

An instrument in writing by which a party is *bound* in law; a bond, commonly called a writing obligatory. *Co. Litt.* 172 a. 2 *Bl. Com.* 340. Lord Coke observes (*ub. sup.*) that *obligation* is a word of large extent, but is commonly taken in the common law for a bond containing a penalty, with condition for payment of money, or to do or suffer some act or thing, &c.

OBLIGATION OF A CONTRACT. The binding force of a contract; the duty to perform a contract. *Story's Conf. Laws*, § 266.

OBLIGEE. The party to whom another is bound; the party to whom a bond is given. 2 *Bl. Com.* 340.

**OBLIGOR.** A party who binds himself, as by a bond; the party by whom a bond is given. 2 *Bl. Com.* 340.

**OBLIQUUS.** Lat. In the old law of descents. Oblique; cross; transverse; collateral. The opposite of *rectus*, right or upright. *Fleta*, lib. 5, c. 7, § 2.

In the law of evidence. Indirect; circumstantial. *Vinnius, Jurispr. Contr.* lib. 4, c. 25.

**OBLITERATION.** A blotting out of writing. See *Rasure*.

**OBOLATA TERRÆ.** L. Lat. In old English law. A measure of land, the quantity of which was uncertain. *Reg. Orig.* 1 b. *Cowell. Spelman.*

**OBRA.** Span. [from Lat. *opera*?] In Spanish law. Work. *Obras*; works or trades; those which men carry on in houses or covered places. *White's New Recop.* b. 1, tit. 5, c. 3, § 6.

**OBREPTIO.** Lat. [from *obrepere*, to creep upon.] The obtaining a thing by fraud or surprise. *Calv. Lex.* Called, in Scotch law, *obreption*.

**OBROGARE.** Lat. [from *ob*, priv. and *rogare*, to pass a law.] In the civil law. To pass a law contrary to a former law, or to some clause of it; to change a former law in some part of it. *Calv. Lex. Tayl. Civ. Law*, 155.

**OBSES.** Lat. In the law of war. A hostage. *Grotius de Jur. Bell.* lib. 3, c. 20, § 52. *Obsides*; hostages. *Id. ibid. Mag. Cart. Johan.* c. 49.

**OBSESSUM.** Lat. [from *obsidere*, to besiege or block up.] In the law of war. Besieged. *Oppidum obsessum*; a town besieged. *Grot. de Jur. Bell.* lib. 3, c. 1, § 5. 1 *Kent's Com.* 144.

**OBSIGNARE.** Lat. In the civil law. To seal up, as money that had been tendered and refused. *Heinecc. El. Jur. Civ.* lib. 3, tit. 30, § 1007.

**OBSOLETE.** [Lat. *obsoletus*, from *obsolere*, to grow out of use.] Grown out of use; disused; antiquated.

**OBSTANTE.** Lat. [from *obstare*, to stand in the way.] Withstanding; hindering. See *Non obstante*.

**OBSTUPARE.** L. Lat. In old practice. To stop up. *Obstupavit et obstruxit*; stopped and obstructed. 1 *Ld. Raym.* 452. 3 *Leon.* 13. 1 *Show.* 252.

**OBTEMPERARE.** Lat. To obey. Hence the Scotch *obtemper*, to obey or comply with a judgment of a court. *Brande. Obtemperandum est consuetudini*

*rationabili tanquam legi.* A reasonable custom is to be obeyed as law. 4 *Co.* 38 b. *Tyrringham's case.*

**OBTORTO COLLO.** Lat. In the Roman law. Taking by the neck or collar; as a plaintiff was allowed to drag a reluctant defendant to court, (*in jus raperere*.) *Adam's Rom. Ant.* 242. *Gilb. For. Rom.* 20, 23.

**OBTULIT SE.** Lat. (Offered himself.) In old practice. The emphatic words of entry on the record where one party offered himself in court against the other, and the latter did not appear. 1 *Reeves' Hist.* 417. See *Optulit*.

**OBVENTIO.** Lat. [from *obvenire*, to fall or come to.] In the civil law. A kind of rent, or income. More commonly used in the plural, (*obventiones*), to denote the profits accruing from a thing, as the earnings of a vessel. See *Exercitor navis*.

In old English law, the rents or revenues of spiritual livings are called *obventions*. *Stat. 12 Car. II.* c. 11.

**OCASION, Occasion.** Span. In Spanish law. Accident. *Las Partidas*, part 3, tit. 32, l. 21. *White's New Recop.* b. 2, tit. 9, c. 2.

**OCCASIO.** L. Lat. In old English law. Molestation; trouble; hindrance; vexation by suit. *Spelman. Cart. de Forest.* c. 12. *Barringt. Obs. Stat.* 38, 39, note [k.]

**OCCASIONARE.** L. Lat. In old practice. To trouble or molest; to vex or harass with litigation. *Spelman. Fleta*, lib. 2, c. 66, § 20. *Cart. Conf.* 49 Hen. III.

**OCCASIONES.** L. Lat. In old English law. Assarts. *Spelman.*

**OCCISION.** L. Fr. [from Lat. *occisio*, from *occidere*, to kill.] A killing or slaying. *Murdre est occision de home.* *Britt.* c. 6.

**OCCULTATIO.** Lat. In old English law. A hiding. *Occultatio thesauri inventi fraudulosa*; the fraudulent concealment of treasure trove. *Bract.* fol. 119 b. 3 *Inst.* 133.

**OCCUPANCY.** [Lat. *occupatio*.] The taking possession of those things which before belonged to nobody. 2 *Bl. Com.* 258. 1 *Steph. Com.* 415. See *Comb.* 290.—The taking possession by any one, of a thing of which there is no owner. *Brande.* See *Occupatio*.

The right acquired by such taking possession. *Id.* 2 *Kent's Com.* 317—325. See *Occupant*.

**OCCUPANT.** [from Lat. *occupans*.] In a general sense. One who takes possession of a thing, of which there is no owner. *Quod ante nullius est, id naturaliter occupanti conceditur.* That which belongs to no one, is by natural reason given to the occupant. *Dig.* 41. 1. 3.

One who takes possession of a thing which has been abandoned. *Occupantis fiunt derelicta.* Things abandoned become the property of the [first] occupant. 1 *Peters' Adm. Dec.* 53.

In a special sense. One who takes possession of lands held *pur autre vie*, after the death of the tenant, and during the life of the *cestuy que vie*. See *General occupant*, *Special occupant*.

**OCCUPARE.** Lat. In the civil law. To seize or take possession of; to enter upon a vacant possession; to take possession before another. *Calv. Lex.*

**OCCUPATIO.** Lat. [from *occupare*, to occupy.] In the civil law. A taking possession of a thing which before belonged to nobody, (*quod ante nullius est*;) as of wild beasts and other wild animals, property and persons captured in war, gems and other things found upon the sea-shore, &c. *Inst.* 2. 1. 12, 17, 18. See *Fleta*, lib. 3, c. 2.

**OCCUPATION.** In old English law. The putting a man out of his freehold in time of war. *Co. Litt.* 249. *Cowell.*

Use, tenure or possession. *Id.*

Usurpation of a franchise. *Id.*

A trade or business. *Id.*

**OCCUPAVIT.** L. Lat. In old English law. A writ that lay for one who was ejected out of his land or tenement in time of war. *Cowell.*

**OCCURRERE.** Lat. To meet; to run against; to stop or bar. See *Nullum tempus occurrit regi*.

**OCCYS.** L. Fr. [from Lat. *occisus*.] Slain; killed. *Britt.* c. 5.

**OCHERN.** Sc. [L. Lat. *ogetharius*.] In old Scotch law. A name of dignity and of a freeholder. *Skene de Verb. Sign.*

**OCTABIS.** L. Lat. [from *octo*, eight.] In old practice. The octave. *Fleta*, lib. 2, c. 35. See *Octave*.

**OCTAVE.** [L. Lat. *octabis, utas*; L. Fr. *utave*.] In old English practice. The eighth day after a feast; one of the return days of writs. The octave of St. Hilary was the eighth day inclusive after the feast of that saint. 3 *Bl. Com.* 278.

**OCTOGILD.** [from Lat. *octo*, eight, and

Sax. *gild*, or *geld*, a payment.] In Saxon law. A pecuniary compensation for an injury, amounting to eight times the value of the thing. *Spelman*, voc. *Geldum*.

**OCTO TALES.** L. Lat. (Eight such.) In old practice. A writ which was issued to the sheriff to summon eight such men as were summoned upon the first panel, to make up a deficiency of jurors. 3 *Bl. Com.* 364.

**OCTROI.** Fr. In old French law. Originally, a duty, which, by the permission of the seigneur, any city was accustomed to collect on liquors and some other goods, brought within its precincts, for the consumption of the inhabitants. Afterwards appropriated to the use of the king. *Steph. Lect.* p. 361.

**OCULATUS TESTIS.** Lat. An eye-witness. 4 *Inst.* 279.

**Odiosa non præsumuntur.** Odious things are not presumed. *Burr. Sett. Cas.* 190.

**OECONOMUS.** Lat. In the civil law. A manager or administrator. *Calv. Lex.*

**OECONOMICUS.** L. Lat. In old English law. The executor of a last will and testament. *Cowell.*

**OEPS, Oes.** L. Fr. Use. *A nostre oeps*; to our use. *Britt.* c. 21. *Stat. Westm.* 1, c. 48. *A son oeps demesne.* *Dyer*, 5. See *Opus*.

Octave. *Al oeps de St. Hilary.* *Yearb. H.* 8 Hen. VI. 26.

"OF," held to be a word of more general description than "at." "My estate of —," than "my estate at —." Lord Ellenborough, 3 *M. & S.* 171, 172. See 3 *Taunt.* 147.

OF, though used in the sense of the genitive case, is constantly expressed in the old books by the Lat. *de* and *ex*, (qq. v.) See 2 *Salk.* 622.

OF A PLEA. See *De placito*.

OF COUNSEL. A common phrase in practice, applied to the counsel employed by a party in a cause, or whose name appears upon the papers. Derived probably from the Lat. *à consiliis*, (q. v.) and expressed by the L. Lat. *de consilio*, (L. Fr. *de counsel*.) *Dyer*, 34 b, 38. The modern phrase "of counsel for" a party was formerly expressed "of counsel with." "The counsellor should give his counsel to him with whom he is of counsel." 5 *Co.* 20.

OF COURSE. [L. Lat. *de cursu*.] In the general prescribed order of practice: without special reference to the court. A

rule is said to be *of course*, when it may be entered by the attorney without application to the court.

OF NEW. A Scotch expression, closely translated from the Lat. *de novo*, (q. v.)

OFFA EXECRATA. L. Lat. In old English law. The morsel of execration; the morsel, (q. v.) 1 *Reeves' Hist.* 21.

OFFENCE. [from Lat. *offendere*, to offend; Lat. *delictum*.] An act committed against a law, or omitted where the law requires it, and punishable by it. *Jacob*. Now generally used as synonymous with *crime*, (q. v.) An act for which any criminal punishment may by law be inflicted. 2 *N. Y. Rev. Stat.* [702, § 32,] 587, § 33.

OFFICE. L. Fr. and Eng. [Lat. *officium*.] A position or station in which a person is employed to perform certain duties, or by virtue of which he becomes charged with the performance of certain duties, public or private.\*—A place of trust. 5 *Mod.* 431, arg. Cowell defines office to be "a function by virtue whereof a man hath some employment in the affairs of another." Finch defines it, "a duty of attendance upon a charge." *Law*, b. 2, ch. 13. Webster defines it to be "a duty, charge or trust." But these seem to be rather the results or incidents (though principal and necessary ones) of office, than to constitute office itself. The idea of an *office* clearly embraces the ideas of tenure, duration, fees or emoluments, rights and powers, as well as that of *duty*. The intrinsic meaning of the word is well expressed by the old English word "place," and the figurative terms "incumbent," "swearing in," "entering upon," "vacating," which are constantly applied to offices, have the same radical idea.

A public station or employment; an employment conferred by appointment of government.\*—An employment on behalf of the government, in any station or public trust, not merely transient, occasional or incidental. Platt, J. 20 *Johns. R.* 493. A charge or trust conferred by public authority. 7 *Porter's (Ala.) R.* 371. See 26 *Alabama R.* 159, arg. A station or employment conferred by election of the people.

A right to exercise a public or private employment, and to take the fees and emoluments thereto belonging. 2 *Bl. Com.* 36. 1 *Crabb's Real Prop.* 431, § 530. A species of incorporeal hereditament. In the United States, no public office can properly be termed a heredita-

ment, and private ministerial offices of this class are rare or unknown. 3 *Kent's Com.* 454. See 1 *Selden's R.* 285.

An abbreviated name for *inquest of office*, (q. v.) *Finch's Law*, b. 4, ch. 24. *Trouve est per office*; it is found by office. *Dyer*, 44, (Fr. ed.)

OFFICE COPY. In practice. A copy of a paper, obtained from the officer with whom the original has been filed or entered. See *Copy*.

OFFICE FOUND. In English law. Inquest of office found; the finding of certain facts by a jury on an inquest or inquisition of office. 3 *Bl. Com.* 258, 259. This phrase has been adopted in American law. 2 *Kent's Com.* 61.

OFFICER. [L. Lat. *officiarius*.] One who holds an office; a person lawfully invested with an office. See *Office*.

Officia judicialia non concedantur antequam vacent. Judicial offices should not be granted before they are vacant. 11 *Co.* 4.

OFFICIAL. [Lat. *officialis*.] In the civil law. The minister or apparitor of a magistrate or judge. *Cowell*.

In the canon law. A person to whom a bishop commits the charge of his spiritual jurisdiction. *Id.*

In common and statute law. The person whom the archdeacon substitutes in the execution of his jurisdiction. *Id.*

OFFICIARIUS. L. Lat. An officer. *Clerke's Prax. Cur. Adm.* tit. 3.

OFFICINA. Lat. A shop; a workshop. *Officina justitiæ*; the shop or mint of justice. 3 *Bl. Com.* 273. *Id.* 48. A name anciently given to the court of chancery, or rather to the ordinary legal branch of that court, as being the place where the king's writs, (the instruments of justice,) were framed. *Id. ibid.* Called also *officina brevium*; the shop of writs. 3 *Wooddes. Lect.* 214.

OFFICIUM. Lat. Office. *Officium nemini debet esse damnosum*. Office ought not to be an occasion of loss to any one. A maxim in Scotch law. *Bell's Dict.* By this rule, a mandatory is entitled to demand from the mandant all reasonable expenses debursed by him *bonâ fide*, and the damage sustained by him in the execution of the mandate, even though the management should have been a losing concern.

OIER, Oir, Oyer. L. Fr. To hear. *Kelham*. See *Oir, Oyer*.

OIL. L. Fr. The eye. *LL. Gul. Cong.* l. 21.

OIL, *Oile, Oyl, Oyel.* L. Fr. Yes; yea. Schard. *Est Jon icy en prop' p'son?* Parn. *Sir, oil.* Yearb. M. 9 Edw. III. 13. Wilby. *Est W. en vie?* Sad. *Sir, oile.* P. 4 Edw. III. 12. *Certes, oile.* M. 6 Edw. III. 45. See *Oyl, Oyel.*

OIL, OIL. L. Fr. Yea, yea; ay, ay. The assent of the commons in 28 Edw. III. *Kelham.*

O'PO. A contraction of *omnino.* 1 *Inst. Cler.* 11.

OIR. L. Fr. To hear. *A oir son jugement*; to hear his judgment. *Fet Assaver*, § 38. *Jeo ai oi dire*; I have heard said. Yearb. P. 1 Edw. II. 4.

OIR. Span. [from Lat. *audire*, to hear.] In Spanish law. To hear; to take cognizance. *White's New Recop.* b. 3, tit. 1, c. 7.

OKER. Sc. In Scotch law. Usury; the taking of interest for money, contrary to law. *Bell's Dict.*

OLD NATURA BREVIUM. The title of a treatise written in the reign of Edward III. containing the writs which were then most in use, annexing to each a short comment concerning their nature and the application of them, with their various properties and effects. 3 *Reeves' Hist. Eng. Law*, 152. So called to distinguish it from Sir Anthony Fitzherbert's treatise on the same subject. *Id.* *Crabb's Hist.* 329. It is generally referred to by the abbreviation O. N. B. and, in the older books, by the Lat. abbreviation *Vet. Na. Br.* or *Vet. Na'br.*

OLD STATUTES. See *Vetera statuta.*

OLD TENURES. A treatise on tenures, written in the reign of Edward III. giving an account of the various tenures by which land was holden, the nature of estates and some other incidents to landed property. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work on the same subject. 3 *Reeves' Hist. Eng. Law*, 151. *Crabb's Hist.* 328.

OLERON, LAWS OF. A collection of maritime law promulgated in or about the time of Richard I. in the island of Oleron, on the coast of France; claimed by the French lawyers to have been a French production compiled under the direction of Queen Eleanor, Duchess of Guienne; and by Selden, and other English writers, to have been an English work, published by her son Richard I. in his character of King of England. These laws are generally ranked next after the *Consolato del Mare* in point of time and celeb-

rity, and have been considered as the foundation of the maritime legislation and jurisprudence of the western nations of Europe. 3 *Kent's Com.* 12. They have been admitted as authority on admiralty questions, in the courts of justice in the United States. *Id.* 13. See 1 *Duer on Ins.* 38, 39, for remarks on the true character of this collection.

OLOGRAPH. A French mode of writing *holograph*, without the aspirate. *Civil Code of Louis.* art. 1567, 1581.

OM, *Omme.* L. Fr. Man; a man or person. Corrupted forms of *home*, (q. v.) *Kelham.*

OME BUENO. Span. In Spanish law. A good man; a substantial person. *Las Partidas*, part. 5, tit. 13, l. 38.

OMISSIO. Lat. [from *omittere*, q. v.] Omission; a leaving out. *Omissio eorum quæ tacite insunt nihil operatur.* The omission of those things which are tacitly implied is of no consequence. 2 *Bulstr.* 131.

OMISSIS OMNIBUS ALIIS NEGOTIIS. Lat. Laying aside all other businesses. 9 *East*, 347.

OMITTERE. Lat. In the civil law. To pass over, or pass by; to leave out; to omit. *Calv. Lex.*

To neglect; to refuse. *Id.*

OMNE. Lat. Every thing; every; all. A word which is said to exclude all exception. *Qui omne dicit nihil excipit.* He who says "every thing" excepts nothing. Hence its employment in law maxims, (see *infra*,) has been sometimes thought to give them an undue generality.

*Omne actum ab intentione agentis est judicandum.* Every act is to be judged by the intention of the doer. *Branch's Pr.*

*Omne crimen ebrietas et incendit et detegit.* Drunkenness both inflames (or aggravates) and reveals every crime. *Co. Litt.* 247 a, 4 *Bl. Com.* 26. *Broom's Max.* [14.]

*Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo.* All right either consent has created, or necessity established, or custom confirmed, [has either been created by consent, or established by necessity, or confirmed by custom.] *Dig.* 1. 3. 40.

*Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius.* Every worthier thing draws to it the less worthy, though the less worthy be the more ancient. *Co. Litt.* 355 b. See *Finch's Law*, b. 1, c. 3, n. 24.

*Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur.*

Every great example has somewhat of injustice, which is compensated by its public utility. *Branch's Pr.* citing *Hob.* 279.

**Omne majus continet in se minus.** Every greater contains in itself the less. 5 *Co.* 115 a, *Wade's case.* *Wingate's Max.* 206, max. 59. The greater always contains the less. *Finch's Law*, b. 1, c. 3, n. 22. *Broom's Max.* 75, [129.] Hence, if a man tender more than he ought to pay, it is good, and the other party ought to accept so much of the sum tendered as is due to him. *Id.* *ibid.* But see the qualification, *ibid.* A man having a power may do less than such power enables him to do. *Id.* 76. *Story on Agency*, § 172. This maxim is supposed to be merely a different version of that of the civil law, *In eo quod plus est, semper inest et minus*, (q. v.) *Dig.* 50. 17. 110. 1 *Wooddes. Lect.* *Introd. Lect.* 5, lxxi. note. Other forms of it are **Omne majus trahit ad se [quod est] minus.** Every greater thing draws to it the less. *Co. Litt.* 43 b. 2 *Co.* 68 b, *Tookers' case.* **Omne majus minus in se complectitur.** Every greater embraces in itself the less. *Jenk. Cent.* 208, case 40.

**Omne quod inædificatur solo cedit.** Every thing which is built upon [the soil] belongs to the soil. *Dig.* 41. 1. 7. 10. *Inst.* 2. 1. 29. *Fleta*, lib. 3, c. 2, § 12.

**Omne sacramentum debet esse de certa scientia.** Every oath ought to be of certain knowledge. 4 *Inst.* 279.

**Omne testamentum morte consummatur, [consummatum est.]** Every will is consummated or made complete by death. 3 *Co.* 29 b. 4 *Id.* 61 b, *Forse & Hembling's case.* *Shep. Touch.* 401. A testament is of no force till after the death of the testator. 2 *Bl. Com.* 500. *Broom's Max.* [378.]

**Omnes licentiam habere his quæ pro se indulta sunt, renunciare.** [It is a rule of the ancient law that] all persons shall have liberty to renounce those privileges which have been conferred for their benefit. *Cod.* 1. 3. 51. *Id.* 2. 3. 29.

**Omnes prudentes illa admittere solent quæ probentur iis qui in arte sua bene versati sunt.** All prudent men are in the habit of admitting those things which are proved by those who are well versed or skilled in their own art. 7 *Co.* 19 a, *Calvin's case.* This is only another form of the maxim, **Cuilibet in arte sua perito credendum est**, (q. v.) though less positively expressed. In the translations given in Branch and

Wharton, its point is lost by the use of the word *approved* instead of *proved*.

**Omnia delicta in aperto leviora sunt.** All crimes that are committed openly are lighter; [or have a less odious appearance than those committed secretly.] 8 *Co.* 127 a, *City of London's case.*

**Omnia præsumuntur contra spoliatores.** All things are presumed against a despoiler or wrong-doer. A leading maxim in the law of evidence. *Best on Evid.* 340, § 303. If a man, by his own tortious act, withhold the evidence by which the nature of his case would be made manifest, every presumption to his disadvantage will be adopted. *Broom's Max.* 425, [725.] "When a man destroys a thing that is designed to be evidence against himself, a small matter will supply it." *Holt, C. J.* 1 *Ld. Raym.* 731. 1 *Greenl. Evid.* § 37.

**Omnia præsumuntur legitime facta donec probetur in contrarium.** All things are presumed to be lawfully done, until proof be made to the contrary. *Co. Litt.* 232 b. *Best on Evid.* 337, § 300. *Broom's Max.* [730.]

**Omnia præsumuntur rite esse acta.** All things are presumed to be done in due form. **Omnia præsumuntur solemniter esse acta.** All things are presumed to be done with due solemnity. *Co. Litt.* 6 b. Every thing is presumed to be rightly and duly performed, until the contrary is shown. Acts done, which presuppose the existence of other acts to make them legally operative, are presumptive proofs of the latter. 2 *Ohio St. R.* 246, 247. 4 *Id.* 148. 6 *Id.* 293. Where acts are of an official nature, or require the concurrence of official persons, a presumption arises in favor of their due execution. *Broom's Max.* 427, [729.] The presumption of law is, that public officers, charged with a public duty, perform that duty rightfully, until the contrary appears. *Shaw, C. J.* 11 *Metcalf's R.* 347. The acts of a court of justice are to be presumed to be rightfully done. 3 *Story's R.* 534. It is an established maxim of law, in relation to the acts of public officers, and especially of judicial tribunals acting within their jurisdiction, that all things shall be presumed to be done rightly, until the contrary is proven. 26 *Mississippi R.* 362. This maxim is now constantly used by the courts, to uphold the maxim **Ut res magis valeat quam pereat.** *Pearson, J.* 3 *Jones' Law R.* 119. See *Best on Evid.* 337—339. See *Rite*.

**Omnia quæ jure contrahuntur, contrario**

jure pereunt. All contracts which are made under a law, are destroyed under a contrary law. *Dig.* 50. 17. 100.

*Omnia quæ sunt uxoris sunt ipsius viri.* All things which are the wife's are the husband's. *Bract.* fol. 32. *Co. Litt.* 112 a. *Finch's Law*, b. 1, c. 3, n. 58. See 2 *Kent's Com.* 130—143.

OMNIBUS AD QUOS PRÆSENTES LITERÆ PERVENERINT, SALUTEM. L. Lat. To all to whom the present letters shall come, Greeting. A form of address with which charters both public and private, (deeds,) and other instruments were anciently commenced. Otherwise modified, as *Omnibus probis hominibus*, (To all good men;) *Omnibus in Christo fidelibus*, (To all the faithful in Christ;) *Omnibus Christi fidelibus*, (To all the faithful of Christ,) &c. See *West's Symboleog.* pars 1, lib. 2, sect. 241, *et passim*.

OMNIBUS PRÆSENTES LITERAS VISURIS VEL AUDITURIS, SALUTEM. L. Lat. To all who shall see or hear the present letters, Greeting. See *supra*.

OMNI EXCEPTIONE MAJORES. Lat. Superior to all exception; beyond all exception. 3 *Bl. Com.* 363.

*Omnis actio est loquela.* Every action is a plaint or complaint. *Co. Litt.* 292 a.

*Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum.* Every conclusion of a good and true judgment follows from good and true premises, and the verdicts of jurors. *Co. Litt.* 226 b.

*Omnis consensus tollit errorem.* Every consent removes error. Consent always removes the effect of error. 2 *Inst.* 123.

*Omnis definitio in lege periculosa.* All definition in law is hazardous. 2 *Wooddes. Lect.* 196. This seems to be abridged from the civil law. *Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit.* All definition in the civil law is hazardous, for there is little that cannot be subverted. *Dig.* 50. 17. 202. See *Definition*.

*Omnis innovatio plus novitate perturbat quam utilitate prodest.* Every innovation disturbs more by its novelty than it benefits by its utility. 2 *Bulstr.* 338. Every innovation occasions more harm and derangement of order by its very novelty, than benefit by its actual utility. *Broom's Max.* 61, [109.] 1 *Salk.* 20.

*Omnis interpretatio, si fieri possit, in instrumentis ita fienda est, ut omnes contrarietates amoveantur.* All interpretation in [of]

instruments should be so made, if possible, that all contrarieties [contradictions] may be removed. *Jenk. Cent.* 96, case 86.

*Omnis nova constitutio futuris formam imponere debet, non præteritis.* Every new statute ought to prescribe a form to future, not to past acts. *Bract.* fol. 228. This maxim has been adopted by Lord Coke with the addition of the word *temporibus*, after *futuris*. 2 *Inst.* 95. The word *constitutio* is translated in Branch's *Principia*, *institution*. It is employed by Bracton several times in the chapter where the above maxim is found, in the sense of the establishment of a servitude (*constitutio servitutis*;) but in referring to the statute of Merton he calls that also *constitutio*, (*constitutio de Merton*;) which authorizes the translation of "statute." The term is obviously derived from the civil law.

*Omnis privatio præsupponit habitum.* Every privation presupposes former enjoyment. *Co. Litt.* 339 a. A "rule of philosophie" quoted by Lord Coke, and applied to the discontinuance of an estate.

*Omnis ratihabitio retrotrahitur et mandato [seu licentiæ] priori æquiparatur.* Every ratification is drawn backward, [has a retrospective operation,] and is equivalent to a previous command [or permission.] *Co. Litt.* 207 a, 258 a. *Wingate's Max.* 485, max. 124. A subsequent ratification is equivalent to a prior authority. *Story on Agency*, § 445. Subsequent assent given to what has been already done has a retrospective effect, and is equivalent to a previous command. *Broom's Max.* 380, [676.] Ratification has retroactive efficacy, and relates back to the inception of the transaction. *Hemphill, C. J.* 16 *Texas R.* 465. A leading maxim of the common law, and of maritime and commercial jurisprudence, and applied constantly in the law of principal and agent. *Broom's Max. ub. sup.* *Story on Agency*, §§ 239, 445. *Shep. Touch.* 57. *Smith's Merc. Law*, 60. 2 *Kent's Com.* 616. 2 *Steph. Com.* 119. Applied also equally to contracts and torts. *Broom's Max.* 345, 383. This maxim seems to be derived from that of the civil law, *Ratihabitio mandato comparatur.* *Dig.* 46. 3. 12. 4. *Id.* 20. 1. 16. 1. *Id.* 13. 7. 20, pr. See *Cod.* 4. 28. 7, pr.

ON ACCOUNT OF WHOM IT MAY CONCERN. A formal clause in English marine policies of insurance, intended to embrace all persons who have an insurable interest in the property, and a lawful right

to be insured. It is retained in some American policies, (as in the Philadelphia forms,) but in others the phrase "for whom it may concern" has been substituted. 2 *Duer on Ins.* 28, 29, note.

**ON OR ABOUT.** A phrase used in conveyancing, in reciting the date of an instrument referred to. To avoid the injurious consequences of error in the recital of dates, &c. the safe and correct practice in conveyancing (a practice inadmissible in pleading) is to recite deeds as bearing date "on or about," &c. thus allowing the deed to be produceable in evidence in support of the title, though the date be mistaken. *Shep. Touch.* (by Preston,) 77. *Id.* 397.

**ONCE IN JEOPARDY.** Once put in peril of legal penalties. For a view of the different interpretations which have been given of this expression, see *Wharton's Am. Crim. Law*, §§ 573—591.

**Once quit and cleared, ever quit and cleared.** (Sc. anis quit and clenged, ay quit and clenged.) *Skene de Verb. Sign. voc. Iter.* ad fin.

**Once a mortgage, always a mortgage.** The right of redemption is held in equity to be an inseparable incident to a mortgage, and all restrictions or qualifications of this right are deemed utterly void. 1 *Hilliard's Real Prop.* 378.

**ONE THIRD NEW FOR OLD.** See *New for old.*

**ONERARE.** Lat. [from *onus*, a burden.] To burden or charge; to lade or load. *Calv. Lex.*

**ONERARI NON.** L. Lat. (Ought not to be charged.) In pleading. A form of commencement of a plea, substituted in some cases for the *actio non*, (q. v.) *Steph. Pl. Appendix*, Note (69.)

**ONERATIO.** L. Lat. [from *onerare*, q. v.] In maritime law. A lading; a cargo. *Loccen. de Jur. Mar.* lib. 2, c. 8, sec. 10.

**ONEROUS CAUSE.** In Scotch law. A good and legal consideration.\* 1 *Forbes' Inst.* part 3, p. 102.

**ONEROUS DEED.** In Scotch law. A deed given for a valuable consideration. *Bell's Dict.*

**O. NI.** An abbreviation of *oneratur nisi habeat sufficientem exonerationem*, (he is charged unless he has a sufficient discharge.) An entry formerly made in the English exchequer, as soon as the sheriff entered into and made up his account for issues, amercements, &c. 4 *Inst.* 116.

**ONOMASTIC.** [from Gr. *ὄνομα*, a name.] A term sometimes applied to the signature of an instrument, where the body of it is in the handwriting of another person. *Best on Evid.* 257, § 210.

**ONUS.** Lat. A burden. or load; a weight. *Onus probandi*; the burden of proof.

The lading, burthen or cargo of a vessel. *Calv. Lex.*

A charge; an incumbrance. *Cum onere*, (q. v.) with the incumbrance.

**ONUS PROBANDI.** Lat. The burden of proving, or proof. *Actori incumbit onus probandi.* The burden of proof rests on the plaintiff. 4 *Co.* 71 b, *Hynde's case.* *Best on Evid.* 291, 293, 295.

**OOR, Aour.** L. Fr. Gold. *Kelham.*

**OPE CONSILIO,** (or **OPE ET CONSILIO.**) Lat. In the civil law. By aid and counsel. A term applied to accessories in the commission of crimes, of similar import to the "aiding and abetting" of the common law. *Inst.* 4. 1. 11, 12. *Dig.* 50. 16. 53. 2. It seems to have been interpreted disjunctively, (by aid or counsel.) *Id. ibid.*

**OPEN.** Not concealed; outward; manifest; apparent.

Not closed, settled or fixed. See *infra.*

**OPEN ACCOUNT.** Every account between two persons having dealings with one another, is deemed an *open account* until, by their tacit or express agreement, it is settled between them. *Pulling on Merc. Accounts*, 30.

**OPEN DOORS.** In Scotch practice. Letters of *open doors* are letters (process) authorizing the officer to whom they are directed to break *open* the *doors* of places in which the goods of a debtor are deposited. *Bell's Dict.*

**OPEN LAW.** In old English law. The trial by the duel or ordeal. See *Lex manifesta.*

**OPEN POLICY.** A policy of insurance in which the amount of interest is not fixed by the policy, but is left to be ascertained by the insured, in case a loss should happen. 3 *Kent's Com.* 272. A policy that contains no declaration of the amount of the interest of the assured, and which consequently casts upon him the burden of proof when he claims an indemnity. 1 *Duer on Ins.* 97.

**OPEN THEFT.** In Saxon law. The same with the Lat. *furtum manifestum*, (q. v.)

**To OPEN.** In practice. To commence or begin; to enter upon. At the trial of a cause, the counsel who first addresses the jury is said to *open* the case; and his address is called the *opening*. In English practice, this is technically called "*opening* the pleadings." The counsel for the party who has the affirmative of the issue is always entitled to begin or open.

**To OPEN.** In practice. To undo a proceeding, or recall an act, for the purpose of restoring a party to the position he was in before such proceeding or act was done; to relieve a party who has merits, against a proceeding by which he has been formally and regularly barred. To *open a default*, is to allow a party a new opportunity of doing the act, for not doing which the default was entered. To *open biddings*, in equity, is to allow a re-sale of property which has once been sold under a decree. The expression is a figurative one, like that of "*letting in*," which imports nearly the same idea.

The expressions "to open" and "to shut" have been applied to a remainder. Ryder, C. J. *Say*. 239.

**OPENING BIDDINGS.** In equity practice. The allowance by a court, on sufficient cause shown, of a re-sale of property once sold under a decree. See *To open*.

**OPERARIUS.** L. Lat. [from *opus*, work.] In old English law. A workman or laborer. *Fleta*, lib. 2, c. 73, § 4.

**OPERIS NOVI NUNTIATIO.** Lat. In the civil law. A protest or warning against [of] a new work. *Dig.* 39. 1. See *Opus novum*.

**OPINIO.** Lat. Opinion. *Opinio communis* or *vulgaris*; common opinion; general or prevalent opinion, as distinguished from the peculiar opinion of some individual, or a new opinion not generally received. It was a rule of the civil law that common opinion was to be regarded in judging and giving legal advice, (*opinio communis judicando et consulendo complecti debet*), though there was much controversy among the civilians as to its application. *Calv. Lex*. To this source may be traced the old English rules on the subject of common opinion. See *Communis opinio*.

**Opinio quæ favet testamento est tenenda.** The opinion which favors a will is to be followed. 1 *W. Bl.* 13, arg.

**OPORTET.** Lat. It behooves; it is needful or necessary. *Oportebit* (the fu-

ture form) had, in the civil law, the sense of *oportet*. *Dig.* 50. 16. 8. And as to the meaning of *oportere*, see *Dig.* 50. 16. 37. **Oportet quod certa res deducatur in donationem.** It is necessary that a certain thing be brought into the gift, or made the subject of the conveyance. *Bract.* fol. 15 b. There should be certainty as to the thing intended to be conveyed, because, as the same writer observes, the gift of an uncertain thing is null, (*quia incertæ rei nulla est donatio*.) *Id. ibid.*

**Oportet quod certa res deducatur in judicium.** It is necessary that a certain (definite) thing be brought to judgment or into court; that is, made the subject of an action, or of the action of the court in the particular case. There must be certainty as to the thing which is presented to the court by the pleadings. 5 *Co.* 35 a, *Playter's case*. *Id.* 38 a, *Tey's case*. *Jenk. Cent.* 84, case 64. This is merely a modification of Bracton's *certa debet esse—res quæ deducitur in judicium*. *Bract.* fol. 240.

**Oportet quod certa sit res quæ venditur.** It is necessary that there should be a certain thing which is sold. To make a valid sale, there must be certainty as to the thing which is sold. *Bract.* fol. 61 b.

**OPP'.** A contraction of *obtulit* or *optulit*, in the old books. *A. opp' se versus B. quarto die*; A. offered himself against B. on the fourth day. *Fleta*, lib. 2, c. 65, § 11. *Id.* c. 67, § 2.

**OPPIDUM.** Lat. A town. *Dig.* 50. 16. 239. 7.

**OPPIGNERARE.** Lat. In the civil law. To pledge. *Calv. Lex*.

**OPPOSER.** [L. Lat. *oppositor*.] In old English law. An officer in the court of exchequer. See *Foreign apposer*. Sometimes treated as a corrupted form of *apposer*, (q. v.) but there are good reasons for considering it as the genuine word.

**Opposita juxta se posita magis elucescunt.** Opposite things when placed near each other (in juxtaposition) appear in a clearer light. *Bacon's Works*, iv. 256, 258, 353.

**Optima est legum interpretres consuetudo.** Custom is the best interpreter of laws. *Dig.* 1. 3. 37. Adopted in the common law, with a slight verbal variation. **Optimus interpretres legum consuetudo.** 2 *Inst.* 18. *Bacon's arg.* Jurisdiction of Marches, *Works*, iv. 260. 1 *Wooddes. Lect.* Introd. Lect. 2, xxxi. That exposition of a law is to be preferred which is approved by constant

and continual use and experience. *Broom's Max.* 421, [719.]

**Optima est lex quæ minimum relinquit arbitrio judicis, optimus judex qui minimum sibi.** That law is the best which leaves least to the discretion of the judge; that judge is the best who leaves least to his own. *Bacon's Aphorisms*, 46. 2 *Dwarris on Statutes*, 782. That system of law is best which confides as little as possible to the discretion of the judge,—that judge the best who relies as little as possible on his own opinion. *Broom's Max.* 37, [60.] 1 *Kent's Com.* 478.

**Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum.** The best interpreter of a statute is (all its parts being considered,) the statute itself. 8 *Co.* 117 b, *Bonham's case*. *Wingate's Max.* 239, in max. 68.

**Optimus interpres rerum usus.** Use or usage is the best interpreter of things. 2 *Inst.* 282. *Broom's Max.* 415, [712.]

**OPTION.** [from Lat. *optio*, choice.] In English ecclesiastical law. A customary prerogative of an archbishop, when a bishop is consecrated by him, to name a clerk or chaplain of his own to be provided for by such suffragan bishop; in lieu of which it is now usual for the bishop to make over by deed to the archbishop, his executors and assigns, the next presentation of such dignity or benefice in the bishop's disposal within that see, as the archbishop himself shall choose, which is therefore called his *option*. 1 *Bl. Com.* 381. 3 *Steph. Com.* 63, 64. *Cowell*.

**OPTIONAL WRIT.** In old English practice. That species of original writ, otherwise called a *præcipe*, which was framed in the alternative, commanding the defendant to do the thing required, or show the reason wherefore he had not done it. 3 *Bl. Com.* 274.

**OPTULIT.** An old form of *obtulit*, used in Bracton. *Bract.* fol. 354, 354 b.

**OPUS.** L. Lat. In old English law. Benefit; advantage. See *Ad opus*. This word seems to have been framed from the L. Fr. *oepe*, (q. v.)

**OPUS.** Lat. and L. Lat. In civil and old English law. Work; labor. See *infra*.

A thing made or done by labor. See *infra*.

**OPUS LOCATUM.** Lat. In the civil law. A work let out. *Opus*, according to Labco, signified the same with the Gr.

*ἀποτίλεσμα*, a complete work, a thing made or done by labor, and not *ἔργον*, labor itself. *Dig.* 50. 16. 5. 1.

**OPUS MANIFICUM.** L. Lat. In old English law. Labor done by the hands; manual labor; such as making a hedge, digging a ditch. *Fleta*, lib. 2, c. 48, § 3. In the parallel passage in Bracton, the expression is *opus manifestum vel manufactum*, and *manifestum* is repeated. *Bract.* fol. 159 b, lib. 3, tract. 2, c. 37, ¶ 13.

**OPUS NOVUM.** Lat. In the civil law. A new work. By this term was meant something newly built upon land, or taken from a work already erected. He was said *opus novum facere* (to make a new work,) who, either by building or by taking any thing away, changed the former appearance of a work. *Dig.* 39. 1. 1. 11.

"OR," in written instruments, is frequently construed to mean "and," where such construction is necessary to effectuate the intention of the parties. Thus, in a deed. 5 *Co.* 112 a, *Mallory's case*. So, in a bond. *Cro. Jac.* 322. See 3 *Term R.* 470. So, in a will. 5 *Bos. & Pull.* 38. 9 *East*, 366. 16 *Ib.* 67. 6 *Johns. R.* 54—58. 1 *Metcalf's R.* 88. 1 *Jarman on Wills*, 443—454, (416, Perkins' ed. 1849, note.) 4 *Zabriskie's R.* 686. 2 *Hilliard's Real Prop.* 535.

It has been said that there is perhaps no word in the language of more equivocal effect than *or*. Hence, in England, it has been excluded from indictments, though it has been admitted in American practice. *Wharton's Am. Crim. Law*, §§ 294—296.

**ORA.** Lat. In old English and Scotch law. A Saxon coin of the value of 16d. mentioned in Domesday, the *Regiam Majestatem*, and other records. *Spelman*.

An ounce of the value of 20d. *Id.* And see *Skene de Verb. Signif.*

**ORAL PLEADING.** Pleading by word of mouth, in the actual presence of the court. This was the ancient mode of pleading in England, and continued to the reign of Edw. III. *Steph. Pl.* 23—26.

**ORATIO.** Lat. In the Roman law. An oration or address made by the emperor before the senate, expressing his opinion or pleasure; upon which the decree of the senate (*senatus consultum*,) was formed. *Taylor's Civ. Law*, 227, 228.

**ORATIO SIGNIFICATIVA.** Lat. In old English law. The meaning of an instrument, as distinguished from the mere

letters (*literæ*) in which it was written. *Fleta*, lib. 2, c. 56, § 20.

ORATOR. L. Lat. and Eng. [from *orare*, to pray or petition.] In equity pleading. A petitioner; one who prays for relief. The plaintiff or complainant in a bill in chancery is so styled in the bill, and sometimes in the reports. *Hughes' Equity Draftsman*, 1—455. 28 *Vermont R.* 87, 382.

ORATOUR. L. Fr. A complainant; a petitioner. *Kelham*.

ORATRIX. L. Lat. and Eng. [from *orare*, to pray.] In equity pleading. A female petitioner. A female complainant in equity is so styled in the bill. *Hughes' Equity Draftsman*, 2, 3, 4.

ORDEAL. [Sax. *ordale*, from *or*, great, and *dæl*, judgment; L. Lat. *ordalium*.] In Saxon and old English law. An ancient mode of trial, otherwise called *judicium Dei*, the judgment of God, it being regarded as the means of obtaining a miraculous interposition of Heaven in favor of innocence, by protecting a party accused from the destructive or natural effects of fire and water to which he was subjected. See *Fire ordeal*, *Water ordeal*. Spelman has given from the *Textus Roffensis*, a minute and curious account of the religious services which accompanied the ordeal, including the administration of the sacrament, the prayers, readings, benedictions, the solemn adjuration of the water or fire, &c.

ORDENAMIENTO. Span. In Spanish law. An order emanating from the sovereign, and differing from a *cedula* only in form, and in the mode of its promulgation. *Schmidt's Civ. Law*, Introd. 93, note.

ORDENAMIENTO DE ALCALA. Span. A collection of Spanish law, promulgated by the Cortes in the year 1348. *Schmidt's Civ. Law*, Introd. 75.

ORDER. [Lat. *ordo*.] In practice. A direction in writing, granted by a court or judge, requiring or authorizing some act to be done. In actions at law, the term is usually applied to the acts of a judge at chambers, those of the court being designated as *rules*. See *Rule*.

ORDER. In mercantile law. The usual word employed in bills of exchange, promissory notes, and checks, when it is intended to make them negotiable. The ordinary expression for this purpose is, "Pay to A. or order," or, "Pay to the

order of A." which are deemed to import the same thing. *Story on Bills*, § 56. See *Negotiable words*.

ORDERS. See *Holy orders*.

ORDEUM. L. Lat. In old English law. Barley. An English form of *hordeum*. *Fleta*, lib. 2, c. 73, § 19.

ORDINANCE. [L. Fr. *ordynauunce*; Lat. *ordinatio*, q. v.] In old English law. A statute or act of parliament. *Cowell. Hale's Hist. Com. Law*, (Runnington's ed. 1820,) 13. See *Ordinatio*. The L. Fr. *ordynauunce* had the more general sense of enactment, or requirement. *Solonc la ordynauunce de nos estatutz*; according to the ordinance of our statutes. *Britt.* c. 18.

Strictly, a bill or law which might stand with the old law, and did not alter any statute in force at the time, and which became complete by the royal assent on the *parliament roll*, without any entry on the *statute roll*. A bill or law which might at any time be amended by the parliament, without any statute. *Hale's Hist. Com. Law*, *ub. sup.* An ordinance was otherwise distinguished from a *statute*, by the circumstance that the latter required the three-fold assent of king, lords and commons; while an ordinance might be ordained by one or two of these constituent bodies. See 4 *Inst.* 25. See *Statute*.

In American law. An act or regulation of congress; such as the Ordinance of 13th July, 1787, for the government of the northwestern territory.

A law or regulation of a municipal corporation.

ORDINARE. L. Lat. In old English law. To ordain; to establish; to make (a law.) *Ordinavit*; he (the king) ordained. This word is used in *Fleta*, in reciting the statute of Acton Burnel. *Fleta*, lib. 2, c. 64, § 2. *Ordinatum*; ordained. Used in the statute of Marlbridge. *Id.* lib. 2, c. 47, § 13.

To appoint. *Ordino et constituo talem et talem executores meos*; I ordain and constitute such and such a one my executors. *Yearb. M.* 3 Hen. VI. 6.

In practice. To order. See *Ordinatum*.

ORDINARIUS. Lat. [from *ordo*, order.] In the civil law. Ordinary; regular; according to usual course and rule. *Ordinaria judicia* (ordinary judgments, trials or actions) were those in which the usual and regular order of pleading and litigating was observed, that is, first *in jure*, be-

fore the prætor, and then in *judicio*, before the *juder*.

Ordinary; of course; inherently. Applied, both in the civil and common law, to a judge who had a jurisdiction in his own right, and not by the gift or deputation of another. *Calv. Lex. Co. Litt.* 96 a. See *Bract*. fol. 401.

ORDINARY. [Lat. *ordinarius*, q. v.] In the civil law. A judge who had authority to take cognizance of causes in his own right, and not by deputation. See *Ordinarius*.

In English law. An ecclesiastical judge who has the regular ordinary jurisdiction, independent of another. 1 *Burn's Eccl. Law*, 22. *Co. Litt.* 344 a.

A bishop, as having ordinary jurisdiction in his own diocese. 1 *Bl. Com.* 383. *Brande*. The ordinary formerly had the administration of an intestate's chattels. *Finch's Law*, b. 2, c. 15, p. 173.

In old English law. A deputy of the bishop, appointed to give malefactors their neck-verses, (q. v.) and judge whether they read or not; also to perform divine services for them and assist in preparing them for death. *Wharton's Lex.* The clergyman who performs the latter offices for condemned criminals is still called the ordinary. *Brande*.

In Scotch law. A single judge of the court of session, who decides with or without a jury, as the case may be. *Brande*.

In American law. A judicial officer having the powers of a judge of probate, or surrogate. *N. J. Rev. St.* tit. 7, c. 4.

ORDINARY CARE. That care which men of ordinary prudence and judgment exercise over property of their own. 28 *Vermont R.* 458. *Id.* 464.—That degree of care which may reasonably be expected from a person in the party's situation; reasonable care. 23 *Connecticut R.* 443.—In all cases, what constitutes *ordinary care* must be determined with reference to the nature of the act done and the circumstances attending it. *Whiton*, C. J. 2 *Wisconsin R.* 216, 223.—*Ordinary care* is altogether a relative term; the want of it means nothing more than the failure to use those precautions which a just regard to the persons and property of others demand should be used under the circumstances of the particular case. *Goldthwaite*, J. 26 *Alabama R.* 203.

In *Briggs v. Taylor*, (28 *Vermont R.* 180,) *Redfield*, C. J. objected to the use

of the term "ordinary" in connection with the words "care" and "diligence;" contending that it conveyed no definite idea, was liable to misconstruction, and calculated in some instances to mislead a jury. The subject was considered at much length, and numerous authorities cited. But in the later case of *Brown v. Hitchcock*, in the same court, (28 *Vermont R.* 452, 458,) the term "ordinary care" was made use of without objection.

"ORDINARY SKILL" in an art means that degree of skill which men engaged in that particular art usually employ; not that which belongs to a few men only, of extraordinary endowments and capacities. 20 *Penn. St. R.* 130.

ORDINATIO. Lat. [from *ordinare*, to regulate, to ordain.] An ordinance. *Fleta*, lib. 2, c. 64, § 1. The title of several ancient English statutes. *Ordinatio pro statu Hiberniæ*, (Ordinance for the regulation or settlement of Ireland,) passed 17 Edw. I. containing eight chapters of regulations in matters of a judicial nature. 2 *Reeves' Hist. Eng. Law*, 99. *Crabb's Hist.* 173. *Barringt. Obs. Stat.* 160. *Ordinatio Forestæ*, (Ordinance of the Forest,) passed 33 Edw. I. containing regulations about the purviews of forests. 2 *Reeves' Hist. Eng. Law*, 104. Another statute under the same title, passed 34 Edw. I. *Id.* 106, 107.

ORDINATUM EST. L. Lat. In old practice. It is ordered. The initial words of rules of court when entered in Latin. 9 *East*, 25, note. 2 *M. & S.* 144, note.

Ordine placitandi servato, servatur et jus. When the order of pleading is observed, the law also is observed. *Co. Litt.* 303 a. *Broom's Max.* [143.]

ORDINE. L. Fr. A rule or order; a regulation. *Kelham*.

ORDINER, *Ordynier*. L. Fr. To ordain; to establish; to enact or decree. *Britt.* fol. 1.

ORDINIS BENEFICIUM. Lat. In the civil law. The benefit or privilege of order; the privilege which a surety for a debtor had, of requiring that his principal should be discussed, or thoroughly prosecuted, before the creditor could resort to him. *Nov.* 4, c. 1. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 21, § 883.

ORDO. Lat. In old practice. Order; regular succession. *Ordo petendi*; the order of demanding or counting. *Bract.* fol. 400. *Ordo excipiendi*; the order of pleading. *Id. ibid.* *Fleta*, lib. 2, c. 54.

*Ordo agendi*; the order of suing. *Fleta*, lib. 5, c. 6, § 8. *Ordo brevium*; the order of writs. *Id.* § 31.

An order of a court, (*ordo curiæ*.) 1 *Rep. in Ch.* 55.

**ORDO ATTACHIAMENTORUM.** L. Lat. In old practice. The order of attachments. *Fleta*, lib. 2, c. 51, § 12. See *Solemnitas attachiamentorum*.

**ORDO JUDICIORUM.** Lat. In the canon law. The order of judgments; the rule by which the due course of hearing each cause was prescribed. 4 *Reeves' Hist. Eng. Law*, 17.

**ORE.** A Saxon coin of uncertain value. *LL. Gul. Cong.* l. 3, note. See *Ora*.

**ORE.** L. Fr. Now. *Le roy que ore est*; the king that now is. *Artic. sup. Chart.* pr. *D'ore*; at present. *Kelham. Ore est à veyer*; now it is to be seen. *Keilw.* 2 b.

**ORE TENUS.** Lat. By word of mouth; orally; *viva voce*. Pleading was anciently carried on *ore tenus*, at the bar of the court.\* 3 *Bl. Com.* 293. "There is no longer any such thing as pleading *ore tenus*, in courts of record." 5 *Hill's* (N.Y.) *R.* 315.

**ORFGILD.** Sax. [from *orf*, a beast, and *gild*, a payment.] In Saxon law. The price or value of a beast. A payment for a beast. *Spelman*, voc. *Geldum*. The payment or forfeiture of a beast. *Id.* in voc. A penalty for taking away cattle. *Lambard Arch.* 125.

**ORFEURE,** *Orpheour.* L. Fr. [from Lat. *aurifaber*.] A goldsmith. *Art. sup. Chart.* c. 20.

**ORIGINAL BILL.** In old practice. The ancient mode of commencing actions in the English Court of King's Bench. See *Bill*.

**ORIGINAL BILL.** In equity pleading. A bill which relates to some matter not before litigated in the court by the same persons standing in the same interests. *Mitford's Chanc. Pl.* 33.

**ORIGINAL CONVEYANCES.** Those conveyances at common law, otherwise termed *primary*, by which a benefit or estate is created or first arises; comprising feoffments, gifts, grants, leases, exchanges and partitions. 2 *Bl. Com.* 309.

**ORIGINAL PROCESS.** In old practice. That process which is till the defendant do appear. *Finch's Law*, b. 4, ch. 26.

**ORIGINAL WRIT, or ORIGINAL.**

[L. Lat. *breve originale*.] In English practice. A writ issuing out of chancery, and so called because it anciently gave *origin* and commencement to an action at common law. It was principally used in the court of Common Bench, and in form was a mandatory letter from the king in parchment, sealed with his great seal, and directed to the sheriff of the county wherein the injury complained of was committed or supposed to be, requiring him to command the wrongdoer or party accused, either to do justice to the complainant, or else to appear in court and answer the accusation against him. 3 *Bl. Com.* 273. This writ constituted the foundation of the suit, and of the jurisdiction of the court, being the king's warrant for the judges to proceed to the determination of the cause. *Id. ibid.* See *Breve*.

In modern practice, the use of original writs is confined to real actions exclusively. 3 *Steph. Com.* 565, 658.

In American practice, they have been employed to some extent, but are now in general superseded by other forms of process.

**Origo rei inspicere debet.** The origin of a thing ought to be regarded. *Co. Litt.* 248 b. See *Initium, Principium*.

**ORPHANOTROPHUS.** Græco-Lat. [from *ὀρφανός*, an orphan, and *τρέφω*, to nourish.] In the civil law. One who had the charge of a house for orphans. *Cod.* l. 3. *Nov.* 7, epil.

**ORRAY.** L. Fr. [from *oyer*, to hear.] Shall hear. *Orrount*, (plur.) *Britt.* c. 41.

**ORRETZ.** L. Fr. Golden; of gold. *Yearb.* T. 1 *Edw.* II. 17.

**ORREUM.** An old form of *horreum*, a granary. See *Horreum*.

**OSTEL.** L. Fr. A household; an inn; lodging; entertainment. *Kelham*.

An old form of *hostel*, (q. v.)

**OSTENDIT VOBIS.** L. Lat. In old pleading. Shows to you. Formal words with which a demandant began his count. *Fleta*, lib. 5, c. 38, § 2.

**OSTENSIBLE PARTNER.** A partner whose name is made known and appears to the world as a partner, and who is in reality such. *Story on Partn.* § 80.

**OSTENSURUS.** L. Lat. To show. A formal word in old writs. *Reg. Orig.* 36. *Fet Assaver*, § 21.

**OSTER.** L. Fr. To take away; to take out or off. *Oste del file*; taken off the file. *Yearb.* H. 20 *Hen.* VI. 1.

OSTENTUM. Lat. In the civil law. A monstrous or prodigious birth. *Dig.* 50. 16. 38.

OSTIUM. Lat. An entrance; a gate or door. See *infra*.

The mouth of a river. 3 *Bell's App. Cas.* 331.

OSTIUM ECCLESIAE. L. Lat. In old English law. The door or porch of the church, where dower was anciently conferred. See *Ad ostium ecclesiae*.

OSTIA REGNI. Lat. Gates of the kingdom. The ports of the kingdom of England are so called by Sir Matthew Hale. *De Jur. Mar.* pars 2 (de port. mar.) c. 3.

OTER LA TOUAILLE. O. Fr. In the laws of Oleron. To deny a seaman his mess. Art. 13. Literally, to deny the table cloth or victuals for three meals. See 1 *Peters' Adv. Dec.* Appendix, xxvii. 2 *Id.* Appendix, lxxxv.

OTHE, Oth. O. Eng. Oath; an oath. *Bract.* fol. 185. See *Othesworthe*.

OTIESWORTHIE. O. Eng. Oathsworthy; oathworthy; worthy or entitled to make oath. *Bract.* fol. 185, 292 b. Bracton quotes as an English phrase of his time, *he ne es othes worthe that es entes gylty of othe broken*. *Id.* fol. 185.

OU. L. Fr. Or. *Britt. passim*.

Where; whether. *L. Fr. Dict.*

Whereas; whereto. *Kelham*.

With; within; in. *Id.*

OULTRE LE MERE. L. Fr. Beyond the sea. *Yearb.* P. 1 Edw. III. 27.

OUNCE. [Lat. *uncia*, Sp. *onca*.] The twelfth part of a pound.

The twelfth part of any thing. See *Uncia*.

"OUR," construed. "Pay to our order." 4 *M. & S.* 13. See 8 *M. & W.* 616. 9 *Id.* 346.

OUST. [from L. Fr. *ouster*, q. v.] In old English law. To take away. "6 Ric. 2, cap. 6, *ousteth* battail in an appeal of rape." *Finch's Law*, b. 4, ch. 37. "Ousting battail." 12 *Mod.* 21.

In modern law. To deprive. *Ousting* a corporation of its franchises. 12 *Mod.* 18, 19. *Ousted* of a plea in abatement. Lord Ellenborough, 3 *East*, 62.

To put out; to turn out or eject. 3 *Bl. Com.* 201, 202.

OUSTER, Oster. L. Fr. To put out. *Oustes de court*; put out of court. *Britt.* c. 21.

To take away. *Boundes oustes. Britt.* c. 50.

To deprive. *Il serra ouste de son ley. Yearb.* II. 20 Hen. VI. 4.

To deny a thing asked. M. 5. Edw. III. 14.

OUSTER. In practice. A putting out; dispossession; amotion of possession. 3 *Bl. Com.* 167—173. *Id.* 197, 199, 202, 204. The putting out of a freeholder. *Finch's Law*, b. 3, ch. 5. A species of injury to things real, by which the wrongdoer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession. 2 *Crabb's Real Prop.* 1063, § 2454 a.

OUSTER, Oustre, Outre. L. Fr. Over; beyond; farther. *Oustre un jour*; over a day. *Britt.* c. 29. *Respondeat ouster*, (q. v.;) answer further or over. *Dites ouster*; say over. *Yearb.* M. 5 Edw. III. 49. *Et dit ouster*; and says further. *Dyer*, 70 b, (Fr. ed.)

OUSTER LE MAIN. L. Fr. To remove the hand. Generally written as one word, OUSTERLEMAIN. In old English law. The delivery of lands out of a guardian's hands, when the male heir arrived at the age of twenty-one, or the female at that of sixteen. *Co. Litt.* 77. 2 *Bl. Com.* 68. Otherwise called *livery*. *Id. ibid.*

The fine payable for such livery. *Id.* 68, 69.

The delivery of lands out of the king's hands, on a judgment upon a *monstrans de droit*. *Cowell*. More commonly called *amoveas manus*, (q. v.)

OUSTER LE MER. L. Fr. Beyond the sea. *Litt.* sect. 677. An older form of this phrase was *oultre meer*, (q. v.)

OUT OF COURT. In practice. Not in a position to prosecute; deprived of the power of prosecuting an action. A plaintiff in an action at law is said to be *out of court*, when he neglects to declare within a certain time (one year, in English practice,) after service of process. 3 *Chitt. Gen. Pr.* 445. A defendant who enters judgment of *non pros* against a plaintiff is said to put him *out of court*.

OUT OF THE REALM. [L. Fr. *hors de royaume*; L. Lat. *extra regnum*.] Out of the power of the king of England, as of his crown of England. *Litt.* sect. 439. *Co. Litt.* 260 a. For if a man be upon the sea of England, he is within the kingdom or realm of England, and within the ligeance

of the king of England, as of his crown of England. *Id. ibid.*

**OUT OF THE STATE.** Held to mean "beyond sea," (q. v.)

**OUT OF TIME.** A mercantile phrase applied to a ship or vessel that has been so long at sea, as to justify the belief of her total loss. 2 *Duer on Ins.* 469, note.

In another sense, a vessel is said to be *out of time*, when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. *Id.* 469. The phrase is identical with "missing ship." *Id. ibid.*

**OUTFANGTHIEFE,** *Utfangtheffe, Utfangentheffe.* Sax. [from *ut*, out, *fang*, taken, and *thef*, thief.] In Saxon and old English law. A thief from *without*, or from abroad, (*latro extraneus*,) taken within a lord's fee, or liberty. *Bract.* fol. 154 b.

The privilege of trying such a thief. *Id.* See *Utfangtheffe*.

**OUTHOUSE.** A small house or building belonging to a messuage or dwelling-house, and usually standing separate from or without it, and at a small distance from it; such as a barn, a stable, a dairy-house, and the like.\* This word has been made the subject of considerable construction in the law of burglary. See 1 *Crabb's Real Prop.* 75, § 89. 1 *Russell on Crimes*, 798—799. *Whart. Am. Crim. Law*, §§ 1561—1564.

**OUTLAND.** [Sax. *utland*, from *ut*, out, and *land*.] In Saxon law. Land lying without or beyond the demesne lands of a manor, and occupied by the lord's tenants; tenemental land; the tenancy. *Spelman*, voc. *Inland*.

**OUTLAW.** [from Sax. *utlugh*, *utlaughe*; L. Lat. *utlagatus*, *exlex*.] In English law. One who is put out of the law, (*extra legem positus*,) that is, deprived of its benefit. *Cowell*. Anciently called *frendlesman* (friendless man, or outcast) and *wulfesheofod*, (wolf's head, *caput lupinum*,) being liable to be killed like a wild beast. See *Caput lupinum*. In modern law, the word has a much less intense meaning; importing, however, the forfeiture of property and loss of civil rights. See *Outlawry*.

To **OUTLAW.** [L. Lat. *utlagare*, *exlegare*.] In practice. To put out of the law, or out of the protection of the law. See *Utlagare*.

**OUTLAWRY,** *Outlary.* [L. Lat. *utlagaria*; L. Fr. *utlagarie*.] In practice.

The being put out of the law; the state of being put out of the law.

The process of putting a person out of the protection of the law, both in regard to his property, and to some extent as to his person. A proceeding adopted against a defendant who has absconded and cannot be found; its ultimate object in civil cases being to obtain effectual access to his property, which becomes forfeited and may be seized and sold. 3 *Steph. Com.* 568. In England, it is effected by issuing writs of exigent and proclamation, under which the defendant is *exacted*, or called and proclaimed at five successive county courts, when if he fail to appear he is adjudged an *outlaw*, and further process is then issued to seize his property. *Id.* 569. In criminal law, outlawry is in the nature of a punishment, and its effect in all cases is to disable the party outlawed from enforcing any of his legal rights in a court of justice. 4 *Steph. Com.* 387, 388. *Cole on Crim. Inform.* 78, 98. Outlawry may be reversed by plea or writ of error according to the case; and recently an outlawry was reversed in the Queen's Bench, after the lapse of one hundred and sixteen years. 7 *Ad. & Ell.* N. S. 216.

Outlawry has been adopted as a proceeding in American practice, though the cases in which it is resorted to, are of comparatively rare occurrence.

**OUTPARTERS.** A name given in old English statutes to certain depredators from Redesdale, on the northern border of England, who made incursions into Scotland, and brought back to their accomplices at home (called *Intakers*) any booty they had taken.\* *Spelman*, voc. *Intakers*. *Stat. 9 Hen. V. c. 8.*

**OUTRAGE.** L. Fr. [from *oultre*, over?] In old English law. Excess; more than is one's due or right. *Et volons que ceuz que serrount amercyes pur destresse faite par eux oustre le value de lour demaunde—soient en la mercy pour le outrage*; and we will that those who shall be amerced for distress made by them beyond the value of their demand—shall be in mercy for the excess. *Britt. c. 27. Si ascun comuner vodra faire outrage, and prendre plus que il ne devera*; if any commoner will do excess, and take more than he ought. *Id. c. 51.*

**OUTRAGIOUS,** *Outraious.* L. Fr. [from *outrage*, q. v.] In old English law. Excessive. *Outragious prise*; an exces-

sive taking; a taking more fees than was due. *Britt.* c. 21. *Est il amerciable pour sa outraoise demaunde*; he is amerciable for his excessive demand. *Id.* c. 53. *Id.* c. 58. *Stat. Westm.* 1, c. 31.

Beyond measure; unusually large. "*Per reason d'un graund, outrageous, and sudden flood.*" *Dyer*, 33, Fr. ed. Used also as an English word. "By very great, outrageous and excessive nombre of people." *Stat. 8 Hen.* VI. c. 7.

OUTRE. L. Fr. [from Lat. *ultra*.] Beyond. *Outre meer*; beyond sea. One of the essoins in old practice. *Britt.* c. 123.

OUTROPER. O. Eng. A person to whom the business of selling by auction was confined by statute. 2 *H. Bl.* 557.

OUTSETTER. Sc. Publisher. 3 *State Trials*, 603.

OUTSUCKEN MULTURES. In Scotch law. Out-town multures; multures, duties or tolls paid by persons voluntarily grinding corn at any mill to which they are not *thirled*, or bound by tenure. 1 *Forbes' Inst.* part 2, p. 140. *Bell's Dict.* voc. *Multures*.

OVE. L. Fr. With. *Kelham*. L. Fr. *Dict.* This word, like the English "with," is used in the old books in the sense of "for." "Yaxley qui fuit ove le plaintiff." *Keilw.* 43. *Judgment fuit done ove le plaintiff*; judgment was given with the plaintiff. *Dyer*, 57 b. *De consilio ove le deft.* *Id.* 38.

OVEL, *Owel*. L. Fr. Equal. *Ovelment*; equally. *Litt.* sect. 210.

OVELTY. In old English law. Equality. *Ovelty* of services. *Finch's Law*, b. 2, c. 6. See *Owelty*.

OVER is used in the old books in the designation of places. *Overdale* and *Netherdale*. *Keilw.* 167.

OVERHAUL. To inquire into; to review; to disturb. "The merits of a judgment can never be *overhauled* by an original suit." *Eyre*, C. J. 2 *H. Bl.* 414.

OVERHERNISSA. L. Lat. [Sax. *oferherniss*, from *ofer*, over, and *hyran*, to hear.] In Saxon law. Contempt; contumacy; despite. *Spelman*. Contempt of court, or neglect of duty. The forfeiture for such offence. *LL. Gul. Conq.* l. 41, note. Sometimes written *overseuness*, and *oversamessa*. *Id.*

OVERLIVE. To survive; to live longer than another. *Finch's Law*, b. 1, c. 3, num. 58. 1 *Leon.* 1.

OVER-LORD. In Scotch law. A feu-

dal superior. *Skene de Verb. Sign.* voc. *Recognition*.

OVERSMAN. In Scotch law. An umpire. 1 *Kames' Equity*, 290. *Bell's Dict.*

OVERT, *Overte*, *Ouverte*. L. Fr. and Eng. Open. Pound-overt; an open or uncovered pound. 3 *Bl. Com.* 12. Market overt; open market. 2 *Id.* 449. *Lettres ouvertes*; open letters; letters patent, (q. v.)

OVERT ACT. [L. Lat. *apertum factum*.] In criminal law. An open, manifest act from which criminality may be implied. *Brande*. An open act, which must be manifestly proved. 3 *Inst.* 12.

OVERVERT. In old English law. High wood. See *Vert*.

OVES. Lat. [pl. of *ovis*.] Sheep. In the civil law. Under a bequest of sheep, (*ovibus*) lambs and rams were not included. *Dig.* 32. 65. 7. *Id.* 32. 81. 4. But under the name of a flock of sheep (*ovium grege*) both were included. *Id.* 32. 81. 5.

OVESQUE. L. Fr. With. *Litt.* sect. 240. *Britt.* c. 38.

For. *Il voile av' argue ovesque le lease*; he would have argued for the lease. *Dyer*, 126 b.

OVILE. Lat. In old English law. A sheep-fold. *Fleta*, lib. 2, c. 76, § 4.

OWEL, *Owele*. L. Fr. [from Lat. *æqualis*.] Equal. *En owele mayn*; in equal hand. *Britt.* c. 39. *Owelment*; equally. *Id.* c. 119.

OWELTY. In old English law. Equality. "*Owelty* of partition." *Co. Litt.* 9 b. A half-French word, sometimes written *ovelty* and *ovealty*. *Cowell*.

OWLING. In English law. The offence of transporting wool or sheep out of the kingdom; so called from its being usually carried on in the night. 4 *Bl. Com.* 154. Now no offence. *Stat.* 5 Geo. IV. c. 47. 4 *Steph. Com.* 291, note.

"OWNER," in the Ohio mechanics' lien law, held not to be limited in its meaning to an owner of the fee, but to include, also, an owner of a leasehold estate. 4 *Ohio St. R.* 101.

OXGANG. [Scotch, *oxengate*; from *ox*, and Sax. *gang*, a going; L. Lat. *bovata*.] In old English law. As much land as an ox could till. *Co. Litt.* 5 a. A measure of land of uncertain quantity. In Scotland, it consists of thirteen acres. *Spelman*. *Cowell*. See *Bovata*.

OXON'. An abbreviation of *Oxonia*, Oxfordshire. 1 *Inst. Cler.* 28.

OYEL, *Oyell, Oyl*. L. Fr. In old records. Yes. *Yearb.* P. 1 Edw. III. 12, 18. T. 3 Edw. III. 14. *Oyell syr*; yes, sir. *Kielw.* 147. *Oyl, certes*. P. 10 Edw. III. 61.

OYER, *Oier, Oir*. L. Fr. [from Lat. *audire*, to hear.] To hear. *Oyes*, (q. v.;) hear you. *Oyez*, (q. v.;) hear ye. *Oyant*; hearing. *Litt.* sect. 240. *T. Jon.* 163. *Oy, oys*; heard. *Britt.* c. 24. *Oy crier*; heard to cry. *Id.* c. 51.

To audit. *Auditors d'oyer l'accompt.* *Yearb.* T. 9 Hen. VI. 32.

OYER. L. Fr. and Eng. [L. Lat. *auditus*.] In old practice. Hearing; the hearing a deed read, which a party sued on a bond, &c. might pray or demand, and it was then read to him by the other party; the entry on the record being, *et ei legitur in hæc verba*, (and it is read to him in these words.) *Steph. Pl.* 67, 68. 3 *Bl. Com.* 299. 3 *Salk.* 119.

In modern practice. A copy of a bond or specialty sued upon, given to the opposite party, in lieu of the old practice of reading it.

OYER ET TERMINER. L. Fr. To hear and determine. *A oyer et terminer toutes quereles*; to hear and determine all complaints. *Britt.* fol. 1. *De oyr et terminer.* *Art. sup. Cart.*

OYER AND TERMINER. A half French phrase applied in England to the assizes, which are so called from the commission of *oyer and terminer* directed to the judges, empowering them to "inquire, hear and determine" all treasons, felonies and misdemeanors. 4 *Bl. Com.* 269, 270. 4 *Steph. Com.* 333. This commission is now issued regularly, but was formerly used only on particular occasions, as upon sudden outrage or insurrection in any place. *Stat. Westm.* 2, c. 29. *F. N. B.* fol. 110 B. *Cowell.*

In some of the United States, the higher criminal courts are called courts of *oyer and terminer*.

OYES. L. Fr. [from *oyer*, q. v.] Hear; hear you, (in the singular.) *Ceo oyes vous home*; hear this, you man. *Britt.* c. 22.

OYEZ. L. Fr. [from *oyer*, q. v.] Hear ye. The introductory word of proclamations made by the criers of courts, retained from the old French form, but most unmeaningly pronounced, (as though it were English,) *O yes*. 4 *Bl. Com.* 340, note. "Clerk of Cr. 'Crier, make an O

yes.' Cr. O yes! You good men that are impannelled," &c. 7 *How. St. Trials*, 2, 3, 161.

In American courts, the English "Hear ye," is commonly employed.

## P.

PACARE. L. Lat. In old records. To pay. 1 *Mon. Angl.* 384. *Pacatio*; payment. *Matt. Paris.* A. D. 1248. *Cowell.*

PACT. [Lat. *pactum*.] An agreement. This word is rarely used alone in English, except as the translation of the Lat. *pactum*, (q. v.) A pact is, in strictness, not a contract.

PACTIO. Lat. [from *pangere*, to strike.] In the civil law. A bargaining or agreeing, of which *pactum*, (the agreement itself,) was the result. *Calv. Lex.* It is used, however, as the synonyme of *pactum*.

PACTO. Span. [from Lat. *pactum*, q. v.] In Spanish law. A promise. *White's New Recop.* b. 1, tit. 6, c. 1, § 1.

PACTUM. Lat. [from *pangere*, to strike.] In the civil law. A pact. An agreement or convention without specific name, and without consideration, which, however, might, in its nature, produce a civil obligation, (*conventio destituta nomine et causâ, quæ obligationem civilem suâ naturâ producere possit*.) *Heinecc. Elem. Jur. Civ. lib.* 3, tit. 14, § 775. A pact was distinguished from a contract, (*contractus*), which had a specific name or present consideration, and carried with it a civil obligation, both being species of *conventio*, (convention,) which was the general term. *Id.* §§ 773—776. *Do ut des* (I give that you may give) was a contract. *Dabo ut des* (I will give that you may give) was a pact. *Calv. Lex.* An action lay upon a contract, but not on a pact. *Id.*

*Pacta conventa, quæ neque contra leges, neque dolo malo inita sunt, omni modo observanda sunt.* Compacts which are not against law, nor entered into with a fraudulent design, are in all respects to be observed. *Cod.* 2. 3. 39.

*Pacta privata non derogant juri communi.* Private agreements cannot derogate from common right (or law.) 7 *Co.* 23 b, *Butt's case*. Parties cannot charge a thing with rent which is not chargeable by the law. *Id. ibid.* Otherwise expressed, *Pactis privatorum juri publico non derogatur.* 4 *Cl. & Fin.* 241. *Broom's Max.* [544.]

**Pacta quæ contra leges constitutionesque, vel contra bonos mores fiunt, nullam vim habere, indubitati juris est.** That contracts which are made against law or against good morals, have no force, is a principle of undoubted law. *Cod.* 2. 3. 6.

**Pacta quæ turpem causam continent non sunt observanda.** Agreements founded upon an immoral consideration are not to be observed. *Dig.* 2. 14. 27. 4.

**PAGA.** Span. In Spanish law. Payment. *Las Partidas*, part 5, tit. 14, l. 1. *Pagamento*; satisfaction.

**PAIARE.** L. Lat. In old statutes. To pay. *Paivit*; (he) paid. *St. Westm.* 2, c. 41.

**PAIN, Payne.** [Lat. *pæna*.] A penalty. "To incur a *pain*;" "to pay a *pain*." 1 *Leon.* 203. "Under pain," "pains and penalties," are expressions still used.

**PAINE (or PEINE) FORT ET DURE.** L. Fr. [L. Lat. *pæna fortis et dura*.] In old English law. Literally, strong and hard or severe punishment. A dreadful punishment inflicted upon those who, being arraigned of felony, stood obstinately mute and refused to plead, or put themselves upon the country. 4 *Bl. Com.* 324, 325. It is called in Britton, penance, (*penaunce*, q. v.) and in the statute of Westminster 1, (c. 12,) *prison fort et dure*, which Blackstone, (*ub. sup.*) considers as the proper and original expression. See *Barringt. Obs. Stat.* 82—87.

This punishment, which was vulgarly called *pressing to death*, is thus minutely described by Staundford, as quoted in Cowell: "He shall be sent back to the prison whence he came, and laid in some low dark house, where he shall lie naked on the earth, without any litter, rushes or other clothing. And he shall lie upon his back, with his head covered and his feet, and one arm shall be drawn to one quarter of the house with a cord, and the other arm to another quarter, and in the same manner let it be done with his legs; and let there be laid upon his body iron and stone, as much as he may bear, or more; and the next day following he shall have three morsels of barley bread without drink, and the second day he shall have drink three times, as much at each time as he can drink, of the water next unto the prison, except it be running water, without any bread: And this shall be his diet till he die." *Staundf. Pl. Cor.* lib. 2, c. 60. See a case in which it was ordered, *Keilw.* 70.

**PAIS, Pays.** L. Fr. [L. Lat. *patria*.] In old English law. Country; the country; a jury, as coming from the country or neighborhood. 3 *Bl. Com.* 359. Trial *per pais*; trial by the country, that is, by jury. *Id.* 349. See *Pays. De faire venir pais à certain jour*; to cause a jury to come at a certain day. *Yearb. M.* 5 Edw. III. 131. See *M.* 8 Edw. III. 36.

The word is still constantly used in the books, in the phrase *in pais*, (q. v.)

Issue (to the country.) *Et sur ceo pais se joint*; and upon this issue was joined. *Yearb. M.* 8 Edw. III. 5.

**PAIX.** L. Fr. In old practice. Peace; the peace or concord in a fine of lauds. See *Peace*.

**PALACE COURT.** In English law. A court of legal jurisdiction, held in the borough of Southwark. See *Marshalsea*.

**PALAM.** Lat. In the civil law. Openly; in the presence of many, (*coram pluribus*.) *Dig.* 50. 16. 33.

**PALATIUM.** Lat. A palace. The emperor's house in Rome was so called from the *Mons Palatinus* on which it was built. *Adam's Rom. Ant.* 613.

**PALATIUM.** L. Lat. In old English law. A paling; a fence. *Fleta*, lib. 4, c. 18, § 1.

**PALEA.** Lat. Chaff. A canon said to be so called by Gratian. 2 *How. St. Trials*, 1167, 1172. But Sir Henry Spelman argued it might be a Latinized form of the Gr. *παλατα*, old or ancient. *Id.* 1172, 1173.

**PALEFRETUM.** L. Lat. In old English law. A palfrey. *Fleta*, lib. 2, c. 73, § 19.

**PALINGMAN.** In old English law. A merchant denizen; one born within the English *pale*. *Blount*.

**PALICEA, Pallicia.** L. Lat. In old records. A paling or paled fence. *Cowell. Blount*.

**PALLACIUM.** L. Lat. In old English law. Palace; a palace. *Mem. in Scacc. H.* 22 Edw. I.

**PALMATA.** L. Lat. In old records. A handful. *Blount*.

**PANDECTS.** [Lat. *Pandectæ*; Gr. *Πανδεκται*, from *πᾶν*, all, and *δέχομαι*, to receive.] A compilation of Roman law in fifty books, published A. D. 529, consisting of selections from the writings of the old jurists, made by Tribonian and sixteen associates, under the direction of Justinian, and constituting one of the four principal

divisions of the *Corpus Juris Civilis*. It is otherwise called the Digests, (Lat. *Digest*, q. v.) and was intended to form a general repertory for the *jus civile*, as the Code furnished for the *constitutiones*. 1 *Mackeld. Civ. Law*. 51—54, §§ 62—64. 1 *Kent's Com.* 539—541. See *Dig. procem. De Conf. Dig.* § 1. *Cod.* 1. 17. 1. 12.

The Pandects are now usually cited by English and American jurists, by numbers, thus: *Dig.* 23. 3. 5. 6, meaning, book 23, title 3, law or fragment 5, section 6; otherwise, D. 23. 3. fr. 5. § 6; or fr. 5. § 6. D. 23. 3. The former mode of citing was by titles and initial words, thus: D. de jure dotium; L. profectitia, § si pater; or vice versa, L. profectitia, § si pater, D. de jure dotium. From this afterwards originated the following: L. profectitia 5, § si pater 6, D. de jure dotium; and lastly, L. 5. § 6. D. de jure dotium, which is the form now commonly used by the continental jurists of Europe. 1 *Mackeld. Civ. Law*, 54, 55, § 65. And see *Taylor's Civ. Law*, 24, 25.

PANDOXARE. L. Lat. In old records. To brew. *Cowell*.

*Pandoxatrix*; an ale-wife; a woman that both brewed and sold ale and beer. *Id.*

PANEL, *Panell*, *Pannel*. [L. Lat. *panella*, *panellum*.] In practice. A list of the names of jurors returned by the sheriff for the trial of a cause, which, in England, is written on an oblong piece of parchment annexed to the jury process. 1 *Bl. Com.* 353.

According to Lord Coke, *panel* is an English word, and signifies a little part; for a *pane* is a part, and a *panel* is a little part. *Co. Litt.* 158 b. And see *Fortescue de L. L. Angliæ*, c. 25, note. But Spelman considers it to mean a sheet or page, (*schedula vel pagina*), or properly a little page, (*pagella*) and refers to two old Anglo-Latin Dictionaries which give this meaning.

PANEL, *Pannel*. In Scotch law. A prisoner who is arraigned for trial at the bar of a criminal court. 2 *Forbes' Inst.* 336.

PANIS. Lat. In old English law. Bread; loaf; a loaf. *Fleta*, lib. 2, c. 9.

PANNAGE, *Pawnage*. [L. Lat. *pannagium*.] In old English law. Food that swine fed on in the woods, as mast of beech, acorns, &c. which some called *pawns*. *Cowell. Barringt. Stat.* 36, note [c.]

A duty for feeding in woods. *Fleta*, lib. 2, c. 41, § 31.

PANNUS. L. Lat. In old English law. Cloth. *Una latitudo pannorum tinctorum*; one width of dyed cloths. *Magna Charta*, 9 Hen. III. c. 25. *Fleta*, lib. 2, c. 12, § 10.

PAPER BOOKS. In English practice. Copies of the proceedings on an issue in law or demurrer, of cases, and of the proceedings on error, prepared for the use of the judges, and delivered to them previous to bringing the cause to argument. 3 *Bl. Com.* 317. *Arch. New Pr.* 353. 5 *Man. & Gr.* 98.

The term is used in Pennsylvania practice. *Reg. Gen.* Dec. 17, 1846. 4 *Penn. St. (Barr's) R.* 263.

PAPER. In English practice. The list of causes or cases intended for argument, called "the paper of causes." 1 *Tidd's Pr.* 504.

PAPER DAYS. In English practice. Days for going through the paper of causes entered for argument. 1 *Tidd's Pr.* 504.

ΠΑΠΠΟΣ, Πάππος. Gr. In the civil law. Grandfather. *Nov.* 18, c. 3.

PAR. Lat. Equal; like. *Par in parem imperium non habet*. An equal has no command over his equal. *Jenk. Cent.* 174, case 48. One justice of peace cannot commit another justice of peace for breach of the peace. *Id. ibid.*

PAR OF EXCHANGE. In mercantile law. The precise equality or equivalency of any given sum or quantity of money in the coin of one country, and the like sum or quantity of money in the coin of any other foreign country into which it is to be exchanged, supposing the money of each country to be of the precise weight and purity fixed by the mint standard of the respective countries. *Story on Bills*, § 30, and note.

PAR. L. Lat. In old English law. A pair. *Par calcarium deauratorum*; a pair of gilt spurs. *Reg. Orig.* 2.

PAR. L. Fr. By. *Par poy et par poy*; by little and little. *Britt.* c. 51.

PAR DELICTUM. Lat. Equal guilt. "This is not a case of *par delictum*; it is oppression on one side and submission on the other; it never can be predicated as *par delictum* when one holds the rod and the other bows to it." Lord Ellenborough, 6 *M. & S.* 165. See *Cum par delictum*, &c. *In pari delicto*, &c.

PARAGE. L. Fr. [L. Lat. *paragium*,

from *par*, equal.] In old English law. Equality of condition, blood or dignity. See *Disparage*.

Equality of lands in the partition of an inheritance. *Spelman*. Tenure by *parage* was where several persons, descended from the same ancestor, held equal portions of an inheritance. *Blackst. L. Tr.* 30.

In feudal law. Equality of condition between persons holding unequal portions of a fee, as between younger sons holding the smaller part and the elder son holding the largest. *Calv. Lex.* And see *Guyot, Inst. Feod.* ch. 18.

PARAMOUNT. [from Fr. *par*, by, and *amount*, above, or *amount*, to ascend.] In English law. Above; over; over all. *Paramount specificis*; above specified. *Kelham*.

A term applied to the supreme lord of a fee, between whom and the tenant, or tenant *paravail*, there was an intermediate or *mesne* lord. *F. N. B.* 135 M. 3 *Bl. Com.* 234. *Litt.* sect. 144. *Cowell*.

Upwards. The correlative of *paravail*, downwards. The meaning of both terms is well illustrated in the following passage: "An inheritance in land descends downwards in the direct line, *paravail* (that is, below) the purchaser, and if there is none in that line, then in the collateral or transversal line *paravail*, and if there is none such *paravail*, then it shall go to the heirs in the collateral or transversal line ascending *paramount*, (that is, upwards.)" *Plowd.* 449.

PARAPHERNA. Græco-Lat. [Gr. *παράρρημα*, from *παρα*, besides, and *ρρημα*, dowry.] In the Roman law. Goods which a woman brought to her husband *besides* her *dos*, or portion. *Dig.* 23. 3. 9. 3. See *Calv. Lex.*

In *Fleta*, this word is written *paraferna*, and called a species of dower. *Fleta*, lib. 5, c. 23, § 6.

PARAPHERNALIA. Græco-Lat. [from Gr. *παράρρημα*, besides, and *ρρημα*, dowry.] See *Parapherna*. *Calv. Lex.*

In English law. Those goods which a woman is allowed to have, after the death of her husband, *besides* her dower, consisting of her apparel and ornaments, suitable to her rank and degree. 2 *Bl. Com.* 436. See 1 *Williams on Exec.* 643—649.

PARATITLA. Græco-Lat. [Gr. *παράτιτλα*.] In the civil law. Notes or abstracts prefixed to titles of law, giving a summary of their contents. *Cod.* 1. 17. 1. 12.

PARAVAIL, *Peravaile*. [L. Fr. *paraval*, from *par*, and *avaler*, to descend, to be

under.] In English law. Below; at the bottom. *Paraval les pontz*; below the bridges. *Kelham*. Tenant *paravail* was the *lowest* tenant of land, holding of a *mesne* lord who himself held of a lord paramount. *Cowell*. 2 *Bl. Com.* 60.

Downwards. *Plowd.* 449.

The etymology of the word is clearly shown in the use of the Fr. *paraval*, and by the correlative *paramount*, (q. v.) but Lord Coke prefers deriving it from *avayl* or *avail*, in the sense of profit. 2 *Bl. Com.* 60.

PARAVEREDUS, *Parafredus*. L. Lat. In old European law. A post-horse, employed in the public service. *L. Boior.* tit. 1, c. 14, § 4. *Marculph.* lib. 1, form. 11. The *paravaredi* were horses furnished for the king's use by the freemen under the monarchy of the Franks. *Esprit des Lois*, liv. 30, c. 13.

PARCEL. [L. Lat. *particula*.] In conveyancing. A word used as synonymous with *piece*: "All that certain lot, *piece* or *parcel* of land." It seems obviously formed from *parcella*, (q. v.) which signified a small piece.

PARCELLA. L. Lat. [qu. *parsella*, dimin. of *pars*, a part?] In old records. A small piece. *Cowell*. *Blount*.

In old pleadings. A parcel or bundle. 2 *Stra.* 809.

PARCENER. L. Fr. and Eng. [L. Lat. *particeps*, *parcennarius*.] A co-heir of lands; otherwise termed *coparcener*, (q. v.) One who holds an estate with others in coparcenary, (q. v.) 2 *Bl. Com.* 187.

*Parceners* are so called, according to Littleton, because they may be constrained to make partition. *Litt.* sect. 241. *Cowell* makes the word to be *quasi parcellers*. It is used by Britton (c. 71,) in its present form.

PARCHEMIN, *Parchemyn*, *Pargemin*. L. Fr. [from Lat. *pergamena*.] Parchment; a parchment; a manuscript on parchment. *Kelham*.

PARCUS. L. Lat. [from O. Fr. *parc*, an enclosed place.] In old English law. A pound; a place for confining cattle found doing damage. *Spelman*. The use of the word, in this sense, is shown by *Spelman* to have been introduced into England by the Saxons, from the continent of Europe; it distinctly occurring in the laws of the Ripuarians, as in the following passage: *Si quis peculium alienum, in messe adprehensum, ad parcum minare non permiserit*, 15

*sol. culpabilis judicetur*; if any one shall not permit a strange beast found in one's harvest (or grain field) to be driven to the pound, he shall be condemned to forfeit fifteen *solidi*. *L. Ripuar.* tit. 82, § 2.

A park; an enclosed place for the preservation of deer. *Spelman. Fleta*, lib. 1, c. 24, § 11. See *Park*.

PARDONARE. L. Lat. In old English law. To pardon. *Fleta*, lib. 1, c. 28, §§ 1, 2. *Pardonavit*; (he) pardoned. *Id. ibid.*

PARDONATIO. L. Lat. [from *pardone*, q. v.] In old English law. Pardon; a pardon. *Fleta*, lib. 1, c. 28, § 1.

PARENS. Lat. and L. Lat. [Fr. *parent*.] A parent; a father or mother. This was the original and proper sense of the word.

In the civil law. Any relative in the direct ascending line, whether male or female; a progenitor. *Appellatione parentis non tantum pater, sed etiam avus et proavus, et deinceps omnes superiores continentur; sed et mater et avia et proavia*; under the name of parent are included not only a father, but also a grandfather and great-grandfather; and also a mother, grandmother and greatgrandmother. *Dig.* 50. 17. 51. *Id.* 2. 4. 4. 2, 3.

In feudal and old English law. A relative by blood; a cousin, (*cognatus, consanguineus*.) *Feud. Lib.* 1, c. 24. *Spelman.* *Parens est nomen generale ad omne genus cognationis*; parent is a general name for every kind of relationship. *Co. Litt.* 80 b. *Litt.* sect. 108. *Mag. Cart. Joh.* c. 50. In the statute of Marlbridge (c. 17,) it is translated a *friend*.

PARENS PATRIÆ. Lat. Parent of the country. In England, the king, as *parens patriæ*, has the general superintendence of all charities. 3 *Bl. Com.* 427.

In the United States, the state, as a sovereign, is the *parens patriæ*. 9 *Howard's R.* 55. 17 *Id.* 384, 393. See 4 *Kent's Com.* 508, note. 2 *Story's Eq. Jur.* § 1189.

PARENT. L. Fr. A kinsman or relative. *Britt.* c. 31. *LL. Gul. Cong.* l. 45.

PARES. L. Lat. In old English law. Equals; peers; equals in rank or dignity. *Magna Charta*, 9 Hen. III. c. 14. *Id. Johan.* c. 21. The freeholders of a neighborhood. 2 *Bl. Com.* 315. See *Coram paribus*.

PARES CURLÆ, (or CURTIS.) L. Lat. In feudal and old English law. Peers of the court. A lord's tenants who sat in

his court to try their fellow tenants. 2 *Bl. Com.* 54. *Feud. Lib.* 1, titt. 2, 3, 4. *Lib.* 2, titt. 2, 16—19, *et passim*. See *Peers*.

The barons who sat in the king's courts for the trial of their peers. 2 *Bl. Com.* 54. *Spelman*.

PARES REGNI. L. Lat. Peers of the realm. *Spelman*. See *Peers*.

PARFOURNY, *Parfurni*. L. Fr. Perfected; completed. A term applied to a judgment. *Britt.* cc. 2, 106, 110.

PARIARE. L. Lat. [from *par*, equal.] In old Scotch law. To make equal. *Pariare rationes*; to square accounts. *Skene de Verb. Sign. voc. Scaccarium*.

*Paribus sententiis reus absolvitur*. Where the opinions are equal, [where the court is equally divided] the defendant is acquitted. 4 *Inst.* 64. Called by Lord Coke, "an old rule."

PARI PASSU. Lat. By an equal progress; equably; rateably; without preference. *Coote on Mortgages*, 56.

PARICLA, *Paricula*. L. Lat. [from *par*, alike.] In old European law. A charter or deed (*charta paricula*) which was like another in all respects; a duplicate. *Marculph.* lib. 1, form. 38. These *pariculæ* are supposed by *Spelman* to have been the origin of the English *indentures*.

PARIENTES. Span. [from Lat. *parens*, q. v.] In Spanish law. Relations. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

PARIES. Lat. In the civil law. A wall. *Paries est, sive murus, sive maceria est.* *Dig.* 50. 16. 157.

PARIES COMMUNIS. Lat. In the civil law. A common wall; a party wall. *Dig.* 29. 2. 39.

PARISH. [L. Lat. *parochia*; L. Fr. *paroche, paroisse*, from Gr. *παροικία*, a neighborhood.] In English law. A circuit of ground, committed to the charge of one parson or vicar, or other minister having cure of souls therein. 1 *Bl. Com.* 111.—The precinct of a parish church, and the particular charge of a secular priest. *Cowell*.—An ecclesiastical division of a town or district, subject to the ministry of one pastor. *Brande*.

In American law, parishes are recognized. As to their nature, and how distinguished from churches, see *Baker v. Fales*, 16 *Mass. R.* 488. *Parker, C. J. Id.* 492, 499, *et seq.* In some of the states, they constitute civil divisions corresponding to counties.

PARIUM JUDICIUM. L. Lat. In

old English law. Judgment of the peers; trial by jury. *Magna Charta*, c. 30.

Spelman has traced this phrase to the laws of the Lombards, and the following passage extracted by him has a striking similarity to the celebrated provision of *Magna Charta*: *Præcipimus et firmiter statuimus, ut nullus miles, &c. sine certa et convicta culpa, suum beneficium perdat, nisi secundum consuetudinem antecessorum nostrorum et iudicium parium suorum*; we command and firmly ordain that no military tenant, &c. without an offence distinctly charged and proved, shall lose his benefice (or fee) unless according to the custom of our ancestors, and the judgment of his peers. *LL. Longob.* lib. 3, tit. 8, l. 4.

PARK. [Lat. *parcus*, from O. Fr. *parc*, an enclosure.] In English law. A tract of enclosed ground privileged for keeping wild beasts of the chase, particularly deer; (*damarum vivarium*.) Spelman.—An enclosed chase, extending only over a man's own grounds. 2 *Bl. Com.* 38. See *Chase*.

PARK-BOTE. In old English law. The being quit of enclosing a park or any part thereof. 4 *Inst.* 308.

PARLE HILL, or PARLINGE HILL. In old records. A hill where courts were anciently held. Spelman speaks of the term as still retained in Ireland. Spelman, voc. *Parlamentum*. See *Moot hill*.

PARLER. L. Fr. To speak. *Parlance*; speech. *L. Fr. Dict.* *Parlour*; a speaker. *Kelham*.

PARLIAMENT. [L. Lat. *parliamentum*, *parlamentum*, *parlementum*; from Fr. *parler*, to speak.] The supreme legislative assembly of Great Britain and Ireland, consisting of the King or Queen, and the three estates of the realm, viz. the lords spiritual, the lords temporal, and the commons. 1 *Bl. Com.* 153. See *Parliamentum*.

The term *parliament* is first met with in 42 Hen. III. but was not used in its modern sense until the reign of Edward I. *Report of Lords' Comm.* 1823, quoted 1 *Spence's Chancery*, 328, note. See 1 *Chitt. Bl. Com.* 147, and note. *Barringt. Obs. Stat.* 77.

PARLIAMENTUM. L. Lat. In old English law. Parliament. The supreme council or legislative assembly of the realm of England; the highest court of the realm. *Co. Litt.* 109 b. 4 *Inst.* 2. *Fortescue de L. L. Angliæ*, c. 18. *Fleta*, lib. 2, c. 64, § 1. *Id.* lib. 2, c. 2, § 1.

PARLIAMENTUM INDOCTUM. L. Lat. Unlearned or lack-learning parliament. A name given to a parliament held at Coventry in the sixth year of Henry IV. under an ordinance requiring that no lawyer should be chosen knight, citizen or burgess; "by reason whereof," says Sir Edward Coke, "this parliament was fruitless, and never a good law made thereat." 4 *Inst.* 48. 1 *Bl. Com.* 177.

PARMI, *Parmy*, *Parme*. L. Fr. By. *Parmy sa bouche*; by his mouth. *Britt.* c. 22. Sometimes written as two words, *per my*, (q. v.)

Through; throughout. *Parmi le realm*; throughout the realm. *Artic. sup. Chart.* c. 1. *Parmi nostre roiaume*. *Conf. Cartar.* 25 Edw. I.

PARNER. L. Fr. To take. *De ceux queuz parnent outragious tolne!*; of those who take excessive or exorbitant toll. *Stat. Westm.* 1, c. 31.

PARNOUR. L. Fr. [from *parner*, q. v.] A taker. *Artic. sup. Chart.* c. 2.

PAROCH. O. Sc. [from Lat. *parochia*, q. v.] In Scotch law. Parish; a parish. 1 *Bell's Ap. Cas.* 595.

PAROÛHE, *Parocke*. L. Fr. [from Lat. *parochia*, q. v.] A parish. *Car en une ville purrout estre plusurs parockes, et en une paroche plusurs maners*; for in one vill (or town) there may be several parishes, and in one parish several manors. *Britt.* c. 50.

PAROCHIA. L. Lat. [from Gr. *παροικία*, a neighborhood.] In old English law. A parish. *Fleta*, lib. 4, c. 15, § 9. *Id.* lib. 6, c. 51, § 4. *Parochia est locus in quo degit populus alicujus ecclesiæ*; a parish is the place in which the people of [attending] any church reside. 5 *Co.* 67 a, *Jeffrey's case*. Formerly applied to a diocese or episcopal district. *Cowell*, voc. *Parochianus*. The word occurs in this sense, in a charter granted by Ceolwulf, king of the Mercians, A. D. 872. Spelman.

PAROL, *Parole*, *Parolle*. L. Fr. A word. *Paroles, parolx*; words. *Britt.* c. 120. *Litt.* sect. 1.

A plaint, plea or pleading. *Britt.* c. 27, 120. The pleadings in a cause. 3 *Bl. Com.* 293. A suit. *Stat. Westm.* 1, c. 25.

PAROL. Oral; that which is given, or done by word of mouth, as *parol* evidence, (q. v.)

Not expressed by deed or specialty, as a *parol* contract, (q. v.)

PAROL CONTRACT. Literally, a ver-

bal contract; but the term is not confined to this meaning. A written contract not under seal; a simple contract. 7 *Term R.* 350, note. *Chitty on Contracts*, 4, (Perkins' ed. 1848.)

Any contract not of record, nor under seal, whether it be written or verbal. *Story on Contracts*, § 10.

**PAROL EVIDENCE.** Oral or verbal evidence; that which is given by word of mouth; the ordinary kind of evidence, given by witnesses in court. 3 *Bl. Com.* 369.

**PAROL DEMURRER.** In practice. A staying of the pleadings; a suspension of the proceedings in an action, during the non-age of an infant. 3 *Bl. Com.* 300. Abolished by statute 11 Geo. IV. and 1 Will. IV. c. 47, § 10. See *Demur.*

**PAROL PROMISE.** A simple contract; a verbal promise. 2 *Steph. Com.* 109. See *Parol contract*.

**PAROLS DE LEY.** L. Fr. Words of law; technical words. *Yearb. P.* 8 Edw. III. 24.

**Parols font plea.** Words make the plea. 5 *Mod.* 458. Sir H. Spelman, arg. 2 *How. St. Trials*, 1178. *Est un maxime en nostre ley*, parols font ple. Yelverton, arg. *Yearb. M.* 19 Hen. VI. 48.

**PARRICIDIUM, Paricidium.** Lat. [from *parens*, parent, and *cædere*, to kill.] In the civil law. Parricide; the murder of a parent. *Dig.* 48. 9. 9.

**PARS.** Lat. A part. *Nemo aliquam partem recte intelligere possit, antequam totum iterum atque iterum perlegerit*; no one can rightly understand any part, until he has read the whole through again and again. 3 *Co.* 59 b. Said of the construction of a statute.

**Parte quacunque integrante sublata, tollitur totum.** Any integral part being taken away, the whole is taken away. 3 *Co.* 41 a, *Ratcliff's case*. A maxim quoted from Aristotle, (lib. *Topicorum*,) with the qualification that *pars integrans* be understood to mean a necessary part, and applied to the incapacity of the half blood to inherit, "because he wants one of the bloods which should make him heritable." *Id. ibid.*

**PARS ENITIA.** L. Lat. [L. Fr. *l'eigne part*.] In old English law. The eldest's part or share; the privilege or portion of the eldest daughter in the partition of lands by lot. See *Æsnetia*.

**PARS RATIONABILIS.** L. Lat. In old English law. Reasonable part or por-

tion; that share of a man's goods which the law gave to his wife and children. 2 *Bl. Com.* 492. *Salvis uxori ipsius et pueris suis, rationabilibus partibus suis*; saving to his wife and children their reasonable parts. *Mag. Cart.* 9 Hen. III. c. 18. *Id. Joh.* c. 26.

**PARS.** Lat. A party (to a suit.) *Pars actrix*; a party plaintiff. *Reg. Orig.* 9 a. *Fleta*, lib. 2, c. 63, § 11. *Clerke's Prax. Cur. Adm.* tit. 4. Singularly translated in Dyer, (179 a,) *part actress*. *Pars agens*. 3 *St. Trials*, 863.

*Pars rea*; a party defendant. *Stat. Marlbr.* c. 13.

**PARS GRAVATA.** L. Lat. In old practice. A party aggrieved; the party aggrieved. *Hardr.* 50. 3 *Leon.* 237.

**PARSON.** [L. Lat. *persona, parsona*; L. Fr. *persone*.] A parish priest; one that has full possession of all the rights of a parochial church. Sometimes called the rector (governor) of the church, "but the appellation of *parson*," observes Sir William Blackstone, "however it may be depreciated by familiar, clownish and indiscriminate use, is the most legal, most beneficial, and most honorable title that a parish priest can enjoy, because such a one, Sir Edward Coke observes, and he only, is said *vicem seu personam ecclesiæ gerere*," [to represent and bear the person of the church.] 1 *Bl. Com.* 384.

A parson is said to be so called, (*persona*,) because by his *person* the church, which is an invisible body, is represented; and he is in himself a body corporate, in order to protect and defend the rights of the church which he *personates*, by a perpetual succession. *Co. Litt.* 300. 1 *Bl. Com. ub. sup.* Dr. Wooddesson observes of this derivation, that it seems too refined for common adoption and ordinary use, adding that "*Le Paroissien*," suggested by Dr. Pegge, in his *Anecdotes of the English language*, seems at least as probable a source, if authorities could be vouched to support it. 1 *Wooddes. Lect.* 186, note.

**PARSON IMPARSONEE.** L. Fr. [L. Lat. *persona impersonata*.] In English law. A clerk or parson in full possession of a benefice. *Cowell*.

**PARSONA.** L. Lat. In old English law. Parson; a parson. *Fleta*, lib. 2, c. 65, § 12.

**PART AND PERTINENT.** In Scotch conveyancing. Formal words correspond-

ing with the English *appurtenances*. *Bell's Dict.*

**PARTES FINIS NIHIL HABUERUNT.** L. Lat. In old pleading. The parties to the fine had nothing, that is, had no estate which could be conveyed by it. 2 *Bl. Com.* 357. A plea to a fine which had been levied by a stranger. *Id. ibid.* 1 *P. Wms.* 520.

**PARTIAL LOSS.** In the law of insurance. A degree of damage not amounting to a total loss.\* More commonly called *particular average*, (q. v.) *Stevens & Benecke on Average*, 341.

The total loss of a part. *Id.* 342.

**PARTIBLE.** [L. Lat. *partibilis*.] In old English law. Divisible; divisible among several; divisible among all the sons. *Hale's Hist. Com. Law*, c. 7. Lands in Normandy were of two kinds, viz. partible and non-partible. *Id.* c. 11.

**PARTICEPS.** Lat. [plur. *participes*; from *pars*, a part, and *capere*, to take.] Literally, a part-taker; a partaker or sharer; one jointly interested with another; an associate or accomplice. See *Particeps criminis*.

In old English law. A part-owner; a parcener. *Sunt plures participes quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nulla parte sit defectus*; several parceners are, as it were, one body, in this, that they have one right, and it is necessary that the body be entire, and that there be a defect in no part. *Fleta*, lib. 6, c. 48, § 2. *Co. Litt.* 164 a. *Dicuntur participes quasi partis capaces, sive partem capientes, quia res inter eas est communis, ratione plurium personarum*; they are called *participes* [parceners] as it were *partis capaces*, [capable of taking part,] or *partem capientes*, [taking a part,] because the thing is common between them, in consideration of their being several persons. *Co. Litt.* 164 b. *Bract.* fol. 66 b, 76 b. *Fleta, ub. sup.*

**PARTICEPS CRIMINIS.** Lat. A sharer, partner, participator or accomplice in [of] crime. Applied to parties both to contracts and offences. 2 *Kent's Com.* 467. 1 *Story's Eq. Jur.* § 302. 1 *Russell on Crimes*, 26. One who is *in pari delicto* with another. Called also *particeps in crimine*. *Fleta*, lib. 1, c. 38, § 13.

**PARTICULA.** L. Lat. In old English law. Parcel. *Perkins*, ch. 10, s. 674, 676, 679.

**PARTICULAR AVERAGE.** In the law of insurance. Every kind of expense or damage short of a total loss, which regards a particular concern, and which is to be borne by the proprietors of that concern alone. *Stevens & Benecke on Average*, (by Phillips,) 341.—A loss borne wholly by the party upon whose property it takes place; so called in distinction from a *general average*, for which different parties contribute. 2 *Phillips on Ins.* 191.

Lord Tenterden has objected to this term as "a very incorrect expression, used to denote every kind of partial loss or damage happening either to ship or cargo from any cause whatever." *Abbott on Ship.* 473. But Mr. Benecke claims that it should be retained, not only as being universally adopted and understood, but also because it is more expressive than the term *partial loss*, which may also convey the idea of the total loss of a part, in which sense it is sometimes used. *Stevens & Benecke on Average*, 342.

**PARTICULAR ESTATE.** An estate precedent to an estate in remainder. As an estate for years to A. remainder to B. for life; or, an estate to A. for life, remainder to B. in tail. This precedent estate is called the *particular estate*, as being only a small part or *particula* of the inheritance, the residue or remainder of which is granted over to another. 2 *Bl. Com.* 165. 1 *Steph. Com.* 290. 4 *Kent's Com.* 233.

**PARTICULAR LIEN.** A specific lien on the particular goods in a tradesman's hands, for the value of work done upon them. *Cross on Lien*, 24.—A right to retain a certain chattel from the owner, until a certain claim upon it [growing out of some labor bestowed upon such chattel, or act done in relation to it,] be satisfied. 2 *Steph. Com.* 132.

**PARTICULAR TENANT.** The tenant of a particular estate. 2 *Bl. Com.* 274. See *Particular estate*.

**PARTICULARS.** In practice. A written statement, (usually termed a *bill of particulars*,) of the items of a plaintiff's demand, or defendant's set-off, in an action at law. See *Bill of particulars*.

**PARTIDA.** Span. Part; a part. See *Las Partidas*.

**PARTIES.** [L. Lat. *partes*, parts.] The persons concerned in any affair, business, contract or proceeding, constituting, in most cases, two sides or *parts* of the trans-

action or proceeding. As in contracts, vendor and vendee, bailor and bailee; in bonds, obligor and obligee; in conveyances, grantor and grantee, mortgagor and mortgagee, lessor and lessee; which in the instrument are specifically arranged in *parts*, being usually designated as "of the first" and "second part," respectively.

In actions, the parties are, by the very nature of the proceedings, arrayed on opposite sides, (*partes*) it being also an invariable rule that there must be *two* parties, and cannot, in form, be more. In the Roman civil law, the parties were designated as *actor* and *reus*. In the common law, they are called plaintiff and defendant; in real actions, demandant and tenant; in equity, complainant or plaintiff and defendant; in Scotch law, pursuer and defender; in admiralty practice, libellant and respondent; in appeals, appellant and respondent, sometimes plaintiff in error and defendant in error; in criminal proceedings, prosecutor and prisoner.

**PARTIE.** L. Fr. Party; a party. *La partie adversarie*; the adverse party. *Britt.* c. 51.

**PARTITIO.** Lat. [from *partire*, to divide or sever.] In the civil law. Partition; division. This word did not always signify *dimidium*, a dividing into halves. *Dig.* 50. 16. 164. 1.

**PARTITION.** [Lat. *partitio*, from *partire*, to divide or sever.] A dividing or severing into parts; the dividing of an estate in which several are jointly interested; the division of an estate in lands held by several, in joint-tenancy, tenancy in common or coparcenary, into separate parts, shares or allotments, according to the respective interests of the parties.

At common law, the established mode of partition was by *writ*, but this in modern times has fallen into disuse, and in England has recently been abolished. 1 *Steph. Com.* 317. In equity, partition may be effected by *bill* filed for that purpose, which is the form of proceeding now generally adopted. *Id. ibid.* 1 *Story's Eq. Jur.* § 646.

In the United States, various modes of making partition have been established by statute. 4 *Kent's Com.* 364, 365, notes.

**PARTITION.** In conveyancing. A species of primary or original conveyance between two or more joint-tenants, coparceners or tenants in common, by which they divide the lands so held among them

in severalty, each taking a distinct part. 2 *Bl. Com.* 323, 324.

**PARTNER.** [Lat. *socius*.] A member of a partnership; an associate in business under the contract of partnership. See *Partnership*. Partners were called, in old law, *coparceners* and *parting fellows*. *West's Symbol.* part 1, lib. 2, sect. 510.

**PARTNERSHIP, or COPARTNERSHIP.** [Lat. *societas*, *societas negotiatoria*; Fr. *société*; Span. *sociedad*.] A contract of two or more competent persons, to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions. 3 *Kent's Com.* 23.—A voluntary contract between two or more competent persons, to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a communion of the profits thereof between them. *Story on Partn.* § 2. See other definitions by Puffendorf, Pothier and Domat, cited *ibid.* *United States Digest*, Partnership. Called, in old law, *society* or *joint-occupying*. *West's Symbol.* part 1, lib. 2, sect. 509.

The connection founded on such contract, or relation growing out of it, which is also sometimes implied by law, even against the intention of the parties.

**PART OWNER.** An owner of a part; one who has an interest in a chattel in common with another, or with others.\* The term is chiefly applied to the owners of moveable or personal property, and particularly of ships and vessels. *Story on Partn.* 412—417.

**PARTUS.** Lat. Birth; offspring. *Partus ex legitimo thoro non certius noscit matrem quam genitorem suum*; the offspring of a lawful bed knows not his mother more certainly than his father. *Fortescue de L. L. Angliæ*, c. 42.

**Partus sequitur ventrem.** The offspring follows the mother; the brood of an animal belongs to the owner of the dam; the offspring of a slave belongs to the owner of the mother, or follows the condition of the mother. A maxim of the civil law, which has been adopted in the law of England in regard to animals, though never allowed in the case of human beings. 2 *Bl. Com.* 390, 94. *Fortescue de L. L. Angliæ*, c. 42. In the United States, the rule of the civil law has been adopted wherever slavery exists. 1 *Hempstead's R.* 483.

**PARTY.** [L. Fr. *partie*; L. Lat. *pars*.] A person concerned, or having or taking part in any affair, matter, transaction or proceeding, considered individually.

A side or part, composed of one or more individuals. See 5 Co. 103 a, *Hungate's case*.

**PARTY WALL.** [Lat. *paries communis*.] A common wall; a wall common to two adjoining estates; a wall erected on the line between two adjoining estates belonging to different persons, for the use of both estates. See *United States Digest*, Party wall.

**PARUM.** Lat. Little; but little. *Parum differunt quæ re concordant.* Things differ but little which agree in substance. 2 Bulstr. 53.

*Parum est latam esse sententiam, nisi mandetur executioni.* It is little [or to little purpose] that judgment be given unless it be committed to execution. Co. Litt. 289.

*Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum.* It profits little to know what ought to be done, if you do not know how it is to be done. 2 Inst. 503.

**PARUM CAVISSE VIDETUR.** Lat. In Roman law. He seems to have taken too little care; he seems to have been incautious, or not sufficiently upon his guard. A form of expression used by the judge or magistrate in pronouncing sentence of death upon a criminal. *Festus*, 325. *Taylor's Civ. Law*, 81. 4 Bl. Com. 362, note.

**PARVA SERJANTIA.** L. Lat. In old English law. Petty serjeanty, (q. v.) *Fleta*, lib. 1, c. 11. Called also *parva serjanteria*. *Mag. Cart.* 9 Hen. III. c. 27.

**PARVUM CAPE.** L. Lat. (Little cape.) In old English practice. A writ which lay on a tenant's default after appearance in a real action. More commonly called *petit cape*, (q. v.) *Roscoe's Real Act.* 282. *Fleta*, lib. 6. c. 14, § 24.

**PASCHA.** L. Lat. [L. Fr. *Pasche*.] In old English law and practice. Easter. *De termino Paschæ*; of the term of Easter. *Bract.* fol. 246 b. *A die Paschæ in quindecim dies*; from the day of Easter in fifteen days; after fifteen days of Easter. *Reg. Jud.* 36. 3 Bl. Com. Appendix, No. iii. sec. 3.

**PASCUA SILVA.** Lat. In the civil law. A feeding wood; a wood devoted to the feeding of cattle, (*quæ pastui pecudum destinata est*.) *Dig.* 50. 16. 30. 5.

**PASCUAGIUM.** L. Lat. [from *pascere*, to feed.] In old records. The feeding or pasturing of animals. *Cowell*.

**PASS.** See *Passport*.

To PASS. In practice. To proceed; to be entered. A verdict or judgment is said "to pass for" a party, where it is delivered in his favor. This term is directly taken from the old French *passer*, (q. v.)

To PASS. In conveyancing. To go from one person to another; to be transferred. "The names of things by which they pass in assurances." *Hale's Anal.* sect. xxiv. "By what names things pass." *Id.* sect. xxxv.

To convey or transfer. "To pass an estate." "Effectual words to pass the interest." *Id.* sect. xxxv. "The passing of estates." *Id. ibid.*

**PASSAGIUM.** L. Lat. [L. Fr. *passage*, from *passer*, to pass.] In old English law. Passage; a passing over sea; a voyage. *Reg. Orig.* 193 b. A term frequently used in the law of essoins, in the days of the Crusades. *Bract.* fol. 339. *Fleta*, lib. 6, c. 8.

A sum paid for being transported over sea, or over a river. *Stat. Westm.* 2, c. 25. *Cowell*.

**PASSER.** L. Fr. In old practice. To pass; to proceed in order of law. *Et selonc le verdict, passera jugement. Et sur tielx verdicts passes par comune assent.* And according to the verdict, judgment shall pass. And upon such verdicts passed by common assent, &c. *Britt.* c. 51. *Et si l'assise eyt passe pur le pleyntyfe*; and if the assise have passed for the plaintiff. *Id.* c. 75. *L'enquest fuist à la barre, prest à passer*; the jury was at the bar, ready to pass. *Yearb. M.* 3 Edw. II. 56. *Et ore le jury fuit al barre, prist à passer.* *Dyer*, 116 b. (Fr. ed.)

**PASSPORT.** [from Fr. *passe-port*, from *passer*, to pass, and *port*, a harbor.] In international law. Literally, a permission to leave a harbor. A document or paper (otherwise called a *pass* or *sea-pass*), carried by a merchant vessel in time of war, intended to evidence the nationality of the vessel, and protect her from belligerents. Sometimes called a *sea-letter*, (q. v.) *Jacobsen's Sea Laws*, 65—69, (Am. ed. 1818.) This instrument was originally granted by the chief officer of the port from which the vessel sailed, whence probably the name. *Id.* 66. See 6 *Wheaton's R.* 1.

In American law. A special instrument

intended for the protection of American vessels against the Barbary powers, usually called a *Mediterranean pass*. *Jacobsen's Sea Laws*, 69, (Am. ed.)

A permission granted in time of war, for the removal of persons or effects from a hostile country; a safe conduct, (q. v.) a privilege or dispensation from the legal effects of war during a certain time, and to a specified extent.\* 1 *Kent's Com.* 161.

In modern European law. A warrant of protection and authority to travel, granted to persons moving from place to place, by the competent officer. *Brande.*

PASTITUM. L. Lat. In old English law. Pasture-ground. *Domesday. Cowell.*

PASTO. Span. [from Lat. *pastus*, q. v.] In Spanish law. Feeding; pasture; a right of pasture. *White's New Recop.* b. 2, tit. 1, ch. 6, § 4.

PASTURA. L. Lat. [from Lat. *pastus*, a feeding, from *pascere*, to feed.] In old English law. Pasture; a feeding; a right to feed animals. *Bract.* fol. 222 b. The word was not confined to the feeding of cattle upon grass, &c. in the modern sense, but included the feeding upon acorns, mast, &c. the browsing of leaves and twigs, &c. *Id. ibid. Fleta*, lib. 4, c. 19, § 5. See *Communia pasturæ.*

A pasture, including the ground itself. *Co. Litt.* 4 b. *Reg. Orig.* 1 b, 2.

PASTUS. Lat. [from *pascere*, to feed.] In old English law. A feeding. *Pastus canum*; feeding of dogs. *Fleta*, lib. 2, c. 82, § 5.

PATEAT UNIVERSIS PER PRÆSENTES. L. Lat. Know all men by the presents. Words with which letters of attorney and other instruments anciently commenced. *Reg. Orig.* 305 b, 306. *West's Symboleog.* part 1, lib. 2, sect. 535, 546.

PATENT. [from Lat. *patens*, from *patere*, to be open.] Open; obvious; apparent. See *Patent ambiguity, Letters patent.*

PATENT. A grant by *letters patent* (of which the word is an abbreviation) of some privilege, property or authority, made by the government or sovereign of a country to one or more individuals.\* *Phillips on Patents*, 1. In England, the ordinary judges of the courts at Westminster are appointed by patent, the chief justice, by writ. *Hale's Anal.* sect. vi.

A grant by the state, of the exclusive privilege of making, using and vending,

and authorizing others to make, use and vend an invention. *Phillips on Patents*, 2.

A grant of lands, by letters patent.

PATENT AMBIGUITY. [L. Lat. *ambiguitas patens*.] An open ambiguity; one which appears on the face of an instrument. See *Ambiguity.*

PATENT RIGHT. A right granted or conferred by a patent.\* 2 *Kent's Com.* 365, *et seq.* See *Patent.*

PATENT ROLLS. In English law. Rolls containing the records of letters patent granted by the crown since the year 1516. The earlier of these records are deposited in the Tower, the others are in the Rolls' Chapel. *Hubback's Evid. of Succession*, 616, 617, where a particular description is given.

PATENT WRIT. In old practice. An open writ; one not closed or sealed up. See *Close writs.*

PATER. Lat. A father; the father. In the civil law, this word sometimes included *avus*, (grandfather.) *Dig.* 50. 16. 201.

*Pater est quem nuptiæ demonstrant.* He is the father whom the nuptials point out, or whom marriage indicates. *Dig.* 2. 4. 5. This rule holds with the civilians, whether the nuptials happen before or after the birth of the child. 1 *Bl. Com.* 446, 454. Its meaning in the latter case is, "He is the father who marries the mother of the child *already* born;" in the former,—"He is the father who is the husband of the mother *when* the child is born." In the former case only, the rule has been adopted in the common law. 1 *Bl. Com. ub. sup. Si uxor tua ex alio filium procreaverit, præsumendum est quod tuus est filius, eo quod nuptiæ probant filium, donec contrarium inde probetur*; if your wife has a child by another man, it is to be presumed that the child is yours, because the nuptials prove the child, until the contrary thereof is proved. *Fleta*, lib. 1, c. 6. "The marriage of the parties is the criterion adopted by the law, in cases of ante-nuptial generation, for ascertaining the actual parentage of the child. If a man marries a woman who is with child, the law raises a presumption that it is his own." Lawrence, J. 8 *East*, 193.

PATER-FAMILIAS. Lat. In the Roman law. A father or master of a family; the head of a family, (*qui in domo dominium habet*), whether actually a father or not, (*quamvis filium non habeat*.) *Dig.*

50. 16. 195. 2. A man who was his own master. (*sua potestatis*.) *Dig.* 1. 6. 4. In England, the king has been called the *pater-familias* of the kingdom. 3 *Bl. Com.* 220. The word has also been used to signify a householder. 8 *Mod.* 40.

**PATERNICUM.** L. Lat. [from *pater*, father.] In old European law. Property which descended to a person on the father's side. *Centur. Chart. Alaman.* chart. 45, 50. *Spelman.*

**PATERNITY.** [L. Lat. *paternitas*, from *pater*, father.] The fact of being a father; the relationship of a father; "fathership," according to Webster.

The Lat. *paternitas* is used in the canon law, to denote a kind of spiritual relationship contracted by baptism. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 161, note.

**PATIBULUM.** L. Lat. In old English law. A gallows or gibbet. *Fleta*, lib. 2, c. 3, § 9.

**PATIENS.** Lat. [from *pati*, to suffer.] One who suffers or permits; one to whom an act is done; the passive party in a transaction. Closely, but not very significantly rendered *patient*. The correlative of *agens*, an agent or active party. See *Agent, Agent and patient*.

**PATIENTIA.** Lat. [from *patiens*, q. v.] In old English law. Sufferance; permission. *Acquiritur possessio et liberum teneamentum ex tempore, et sine titulo et traditione, per longam et pacificam seisinam habitam per patientiam et negligentiam veri domini*; possession and a freehold are acquired by time, and without title and livery, by long and peaceable seisin had by the sufferance and negligence of the true owner. *Bract.* fol. 52. *Fleta*, lib. 4, c. 18, § 2. *Longa patientia trahitur ad consensum*. Long sufferance is drawn to [evidence of] consent. *Id.* c. 26, § 4.

**ΠΑΤΡΑΔΕΛΦΟΣ, Πατραδελφός.** Gr. [from *πατήρ*, father, and *ἀδελφός*, brother.] In the civil law. A paternal uncle, (*patruus*;) a father's brother. *Inst.* 3. 6. 1.

**ΠΑΤΡΑΔΕΛΦΗ, Πατραδελφή.** Gr. [from *πατήρ*, father, and *ἀδελφή*, sister.] In the civil law. A paternal aunt, (*amita*;) a father's sister. *Inst.* 3. 6. 1.

**PATRIA.** Lat. A country; one's country. See *Nemo potest exuere patriam*.

In old English law. A district or neighborhood, within a county. *In habitu seculari, de patria ad patriam in balliva tua vagatur, &c.*; in secular dress, strolls about from neighborhood to neighborhood

in your bailiwick. *Reg. Orig.* 71 b. See *Bract.* fol. 124, 316 b.

The country; a neighborhood, such as a hundred. *Fleta*, lib. 1, c. 24, § 3. *Clamor patriæ*; the cry of the country; the hue and cry. *Id.* § 1.

A jury, or country. *Ponit se super patriam*; he puts himself upon the country. *Bract.* fol. 84. *Patria laboribus et expensis non debet fatigari*; a jury ought not to be harassed by labors and expenses. *Jenk. Cent.* 6, case 9.

**PATRIA POTESTAS.** Lat. In the Roman law. The paternal power; the power of a father, which anciently included that of life and death. *Dig.* 28. 2. 11. 1 *Bl. Com.* 452. Justinian observes of this power, that "it is peculiar to the citizens of Rome, for there are no other people who have such power over their children as we have." *Inst.* 1. 9. 2.

**PATRIMONIUM.** Lat. In the civil law. A paternal or hereditary estate. *Calv. Lex.* But this was not the technical sense, though adopted in the derived English word *patrimony*.

Property; fortune. *Patrimonii munus*; an office of fortune; one which chiefly involved the expenditure of money, (*in quo sumtus maxime postulatur*;) as distinguished from personal care or industry. *Dig.* 50. 4. 1. *Id.* 50. 4. 18. 18.

Property in general; private, exclusive or individual property. [*Res*] *vel in nostro patrimonio vel extra patrimonium nostrum habentur*; things are held either as our own private property or not; [that is, as public or common.] *Inst.* 2. 1, pr. See *Fleta*, lib. 3, c. 1, §§ 1, 2, 3.

**PATRIMUS.** Lat. [from *pater*, father.] In the civil law. One who had a father living. *Calv. Lex. Spelman.*

**PATRINUS.** L. Lat. [from *pater*, father.] In old ecclesiastical law. A godfather. *Spelman.*

**PATROCINIUM.** Lat. In the Roman law. Patronage; protection; defence. The business or duty of a patron or advocate. See *Patronus*.

**PATRON.** [from Lat. *patronus*; *advocatus*, qq. v.] In English ecclesiastical law. He who has the gift of a benefice, [or the right of presentation to a benefice.] *Cowell*. "He who has the right of advowson is called the *patron* of the church." 2 *Bl. Com.* 21.

**PATRON.** Fr. In French marine law.

The master or captain of a vessel. *Ord. Mar.* liv. 2, tit. 1.

**PATRONAGE.** [Lat. *patronatus*.] In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the same with advowson, (q. v.) 2 *Bl. Com.* 21.

**PATRONATUS.** Lat. [from *patronus*, q. v.] In the Roman law. The condition, relation, right or duty of a patron. See *Patronus*.

In ecclesiastical law. Patronage, (q. v.)

**PATRONUS.** Lat. [from *pater*, father, from the closeness of the relation.] In the Roman law. A person who stood in the relation of protector to another who was called his *cliens*, (client, qq. v. ;) a defender or advocate; a patron. One who advised his client in matters of law, and advocated his causes in court. See *Gilbert's For. Rom.* 25.

**PATROON.** Anglo-Dutch. [from Lat. *patronus*, a patron, or feudal superior.] In New-York law. The proprietor of a tract of land, with feudal or manorial privileges; the lord of a manor. See *O'Callaghan's New-Netherlands*, i. 112.

**PATRUEUS.** Lat. [from *patruus*, a paternal uncle.] In the Roman law. A cousin by the father's side. *Fratres patruales*; male cousins who were the children of brothers. *Inst.* 3. 2. 1. *Id.* 3. 6. 4. *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15. *Sorores patruales*; female cousins who were the children of brothers. *Id. ibid.*

**PATRUUS.** Lat. [from *pater*, father; Gr. *πατρειδής*.] In the Roman law. A paternal uncle; a father's brother, (*patris frater*.) *Inst.* 3. 6. 1. 2 *Bl. Com.* 230.

**PATRUUS MAGNUS.** Lat. In the Roman law. A great uncle; a grandfather's brother, (*avi frater*.) *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15.

**PATRUUS MAJOR.** Lat. In the Roman law. A greater uncle; a great grandfather's brother, (*proavi frater*;) a father's or mother's great uncle, (*patris vel matris patruus magnus*.) *Dig.* 38. 10. 10. 16. Called *propatruus*. *Id.* 38. 10. 1. 7.

**PATRUUS MAXIMUS.** Lat. In the Roman law. A greatest uncle; a great great grandfather's brother, (*abavi frater*;) a father's or mother's *patruus major*. *Dig.* 38. 10. 10. 17. Called *abpatruus*. *Id.* 38. 10. 3.

**PAUMER.** L. Fr. To touch; to lay

the hand on. *Paumer le livre*; to touch the book. *Britt.* c. 87. *Adonques jurge le premer en cest manere*, paumaunt evangelies; then shall the first [juror] swear in this manner, laying hand on the gospels. *Id.* c. 52.

**PAUNAGE.** See *Pannage*.

**PAUPER.** Lat. A poor person. One who has not the means of defraying the expenses of a suit. See *In forma pauperis*.

**PAUPERIES.** Lat. [from *pauper*, poor.] In the Roman law. Literally, poverty. But this was not the technical sense.

Damage done by an irrational animal. *Hallifax, Anal.* b. 3, c. 2, num. 12. Damage done without any wrong on the part of the doer, (*damnum sine injuria facientis datum*.) *Inst.* 4. 9, pr. An animal, not having reason, could not be said to commit a wrong. *Id. ibid.* *Dig.* 9. 1. 1. 3. There is no corresponding English word by which *pauperies*, in this sense, can be translated.

**PAUSARE.** L. Lat. In old European law. To lay down. *L. Alam.* tit. 45. *Spelman*.

**PAWN.** [Lat. *pignus*.] A bailment of goods to a creditor, as security for some debt or engagement; a pledge. *Story on Bailm.* § 7. See *Cross on Lien*, 63—71.

To **PAWN.** [Lat. *pignerare*.] To deliver to another in pledge, or as security for a debt or sum borrowed.

**PAWNOR.** The person pawning goods, or delivering goods to another in pledge. Sometimes termed the *pledger*. 3 *Kent's Com.* 578—585. *Story on Bailm.* § 287.

**PAWNEE.** The person receiving a pawn, or to whom a pawn is made; the person to whom goods are delivered by another in pledge. Sometimes termed the *pledgee*. 2 *Kent's Com.* 578—585. *Story on Bailm.* § 287.

**PAX.** Lat. In old English law. Peace; the peace. A state of order and quiet, in the preservation of which the whole community was concerned; otherwise called the king's peace, (*pax regis*;) he being the principal conservator of the peace of the kingdom. 1 *Bl. Com.* 268, 349, 350. *Quod pax nostra teneatur*; that our peace be maintained. *Mag. Cart.* 9 Hen. III. c. 35. The term occurs also in feudal law. *Feud. Lib.* 2, tit. 27, 53.

Freedom from molestation by another. *Fleta*, lib. 2, c. 51, §§ 2, 3.

The privilege of a member of a legislative assembly. See 1 *Bl. Com.* 165.

PAX ECCLESIE. L. Lat. In old English law. The peace of the church. See *Peace of God and the church*.

A particular privilege attached to a church; sanctuary, (q. v.) *Crabb's Hist.* 41. *Cowell*.

PAX REGIS. Lat. In old English law. The king's peace. See *Pax, Contra pacem*.

A place privileged by the king's protection; a space (afterwards called the verge of the court,) extending from the palace gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms and nine barley corns. *Hickes' Diss.* ep. 114, citing the *Textus Roffensis*. 3 *Bl. Com.* 76, note. According to the laws of Edward the Confessor, cited by Spelman, it consisted of four miles, three furlongs, and nine acres in breadth, and nine feet, &c. *LL. Edw. Conf.* c. 12.

To PAY. To discharge an obligation by a performance according to its terms or requirements. *Forbes, J. 1 Cushing's R.* 76. Held not necessarily to imply an acquittal or discharge of an obligation in money. *Id.* 75. Payment may be made in goods. *Id. ibid.*

PAYEE. In mercantile law. The person in whose favor a bill of exchange, promissory note or check is made or drawn; the person to whom, or to whose order, a bill, note or check is made payable. 3 *Kent's Com.* 75. *Chitty on Bills*, 2. *Story on Bills*, § 54, et seq.

"PAYING," in a will, when it makes a fee. See 2 *Mod.* 25. "Paying," in a lease, when it amounts to a covenant. *Id.* 34.

PAYN. L. Fr. [from Lat. *panis*, bread.] In old English law. Bread; distinguished in Britton, (reciting the statute of 51 Hen. III.) as *payn de coket*, (cocket bread,) *payn de gastel*, (wastel bread,) *payn de simenel*, (simnel bread,) *payn de treyt*, (bread of treet,) *payn de toutz blees*, (bread of all grains,) and other kinds. *Britt.* c. 30.

PAYS, Pais. L. Fr. In old English law. The country; a jury. *Si le defend-aunt se eyt mys de bien et de mal en le pays, et le pays die que il soit coupable*; if the defendant have put himself for good and for evil upon the country, and the country say that he is guilty. *Britt.* c. 25.

The country or neighborhood. *Soit le usage du pays et del leu tenu pur ley*; the usage of the country and of the place shall be held for law. *Id.* c. 103.

P'D. A contraction of *prædictus*, (afore-said) in old pleading. 1 *Inst. Cl.* 11.

PEACE. [L. Fr. *peas*, *pees*; Lat. *pax*.] Quiet, orderly behaviour; the quiet orderly behaviour of the citizens or subjects of a community towards one another, and towards the government, which is said to be broken by acts of a certain kind. See *Breach of peace*. Defined in the old books, "a quiet and harmless behaviour toward the king and his people." *Lamb. Eirenarch.* lib. 1, c. 2. *Cowell*.

PEACE OF GOD AND THE CHURCH. [L. Lat. *pax Dei et ecclesiæ*.] In old English law. That rest and cessation which the king's subjects had from trouble and suit of law, between the terms and on Sundays and holidays. *Cowell. Spelman*.

PEACE. [L. Fr. *peas*, *pees*, *peez*, *paix*.] In old English practice. The name sometimes given (from the French) to the concord, in a fine of lands. "Cry (or rehearse) the peace." *Stat. Mod. Lev. Fines*. "The peace is such." *Id. Tret un peace*; drew a concord. *Yearb. P. 1 Edw. III.* 4. See *Paix*.

PEAS, Pees. L. Fr. Peace. *Nostre peas enfriente*; our peace broken. *Britt.* c. 23.

PECCATUM. Lat. [from *peccare*, to sin, or transgress.] A fault; a sin. *Peccatum peccato addit, qui culpæ quam facit patrocinium defensionis adjungit*. He adds sin to sin who joins to the fault which he has committed, the protection of a defence, [who after he has committed an offence undertakes to excuse or justify it.] 5 *Co.* 49.

PECHE. Lat. [from Lat. *peccatum*, q. v.] A fault or offence. *Britt.* c. 34.

PÉCIA. L. Lat. In old pleadings and records. A piece. *Pecia terræ*; a piece of land. *Paroch. Ant.* 240. *Spelman*. *Sex pecias plumbi*; six pieces of lead. *Reg. Orig.* 126. *Pecia fustiani*; a piece of fustian. *Fleta*, lib. 2, c. 12, § 8. *Pecia monetæ*; a piece of money. *Dyer*, 82, (Fr. ed.) Called an uncertain word. 1 *Ld. Raym.* 191. But held good. 2 *Str.* 809.

PECORA. Lat. [pl. of *pecus*.] In the Roman law. Cattle; beasts. The term included all quadrupeds that fed in flocks. *Dig.* 32. 65. 4.

**PECULATUS.** Lat. In the civil law. The offence of stealing or embezzling the public money, (*furtum pecuniæ publicæ vel fiscalis.*) *Calv. Lex. Inst.* 4. 18. 9. *Dig.* 48. 13. 4 *Bl. Com.* 122. Hence the common English word *peculation*; but embezzlement is the proper legal term. 4 *Bl. Com. ub. sup.*

**PECULIAR.** In English ecclesiastical law. An exempt jurisdiction; \* a parish which is exempt from the jurisdiction of the ordinary of the diocese, and is subject to the metropolitan only. 3 *Bl. Com.* 65. See *Court of peculiars.*

**PECULIUM.** Lat. [dimin. of *pecunia*.] In the Roman law. Literally, a little money or property, (*pusilla pecunia*;) a private or separate property; a little property or stock of one's own.\* A limited amount of money or property, which a son or servant was allowed to have, separate from the accounts or stocks of his father or master; (*pusilla pecunia quam filiusfamilias vel servus a rationibus paternis vel dominicis separatam habet.*) *Heinecc. Elem. Jur. Civ. lib.* 2, tit. 9, § 473. Defined by Tubero, according to Celsus, as quoted by Ulpian in the Digests, *quod servus, domini permissu, separatum à rationibus dominicis habet, deducto inde si quid domino debetur*; that which a slave, by permission of his master, has separate from his master's accounts, deducting therefrom whatever he owes his master. *Dig.* 15. 1. 5. 4.

**PECULIUM CASTRENSE.** Lat. In the Roman law. The kind of *peculium* which a son acquired in war, or from his connection with the camp, (*castrum.*) *Hein. El. J. C. lib.* 2, tit. 9, § 474. *Dig.* 49. 17. *Tayl. Civ. Law*, 396.

**PECUNIA.** Lat. [from *pecu* or *pecus*, cattle.] Originally and radically, property in cattle, or cattle themselves. So called, because the wealth of the ancients consisted in cattle. *Co. Litt.* 207 b. This sense of the word was departed from at an early period in Roman law, but very distinctly occurs in old English law. *Pastura ibidem ad pecuniam villæ*; pasture in the same place for the cattle of the town. A common expression in Domesday. *Spelman.* Sometimes qualified as *viva pecunia*. *LL. Edw. Conf.* c. 10.

In the civil law. Property in general, real or personal; any thing that is actually the subject of private property. *Dig.* 50. 16. 222. 178. *Calv. Lex. Heinecc. Elem. Jur. Civ. lib.* 2, tit. 1, § 312. It was a

less extensive term than *res*, though the sense of *res* might be expressed by it. *Dig.* 50. 16. 5, pr. According to Taylor, *res* are such things as may be possessed; *pecunia*, such as are. *Tayl. Civ. Law*, 469.

In a narrower sense, personal property; fungible things. *Calv. Lex.* In old English law, goods and chattels. *Spelman.*

In the strictest sense, money. This has become the prevalent, and almost the exclusive meaning of the word.

**PECUNIA NUMERATA.** Lat. In civil and old English law. Counted money; money paid by count or tale. *Inst.* 2. 24, pr. *Bract. fol.* 94. The Span. *dinero contado* had the same sense.

**PECUNIA NON NUMERATA.** Lat. In the civil law. Money not paid. The subject of an exception or plea in certain cases. *Inst.* 4. 13. 2. See *Exceptio pecuniæ non numeratæ.*

**PECUNIA TRAJECTITIA.** Lat. In the civil law. Literally, money carried across the sea, (*quæ trans mare velitur.*) *Dig.* 22. 2. 1. Money lent to sea, or advanced on the hazard of the lender, to carry (as was supposed) over the sea. *Molloy, de Jur. Mar.* 357. Another name for *foenus nauticum*, (q. v.) or maritime interest. See 2 *Sumner's R.* 157, 181, Story, J.

**PECUNIARY CAUSES.** In English ecclesiastical practice. Causes arising from the withholding of ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby some damage accrues to the plaintiff. 3 *Bl. Com.* 88.

**PECUNIARY LEGACY.** A legacy of a sum of money; a gift of a sum of money by will. Otherwise called a general legacy. 2 *Bl. Com.* 512. But it has been said that the use of the word "pecuniary" synonymously with "general," as descriptive of a legacy, is not strictly accurate; for every general legacy is not *pecuniary*, (i. e. relating to money,) and one species of specific legacy is of a pecuniary nature. 1 *Roper on Legacies*, 150, (ch. 3, sect. 1,) note.

**PECUS.** Lat. [pl. *pecudes*.] In the Roman law. Cattle; a beast. Under a bequest of *pecudes*, were included oxen and other beasts of burden. *Dig.* 32. 81. 2.

**PEDAGIUM.** L. Lat. [from *pes*, foot.] In feudal law. Money given for the passing by foot or horse through any country. *Spelman. Cowell.* 8 *Co.* 47 a.

**PEDANEUS.** Lat. [from *pes*, foot.] In the Roman law. On, or at the foot; occupying a low position. A term applied to the *judices* appointed by the prætor to determine causes; either from their not occupying a tribunal or elevated seat, or because they were occupied with small or less important causes. See *Judex pedaneus*.

**PEDE PULVEROSUS.** Lat. In old English and Scotch law. Dusty-foot, (Sc. pedder.) A term applied to itinerant merchants, chapmen or pedlars who attended fairs. Skene defines it "ane merchand or cremar, quha hes ne certaine dwelling-place quhair the dust may be dicht fra his feet or schone." *De Verb. Signif.* See *Piedpoudre*.

**PEDELLUS.** L. Lat. In old Scotch law. A serjeant or beadle, (Sc. serjand or beddle.) Derived à *pedo*, *hoc est*, *baculo*, a wand, staff or halbert. *Skene de Verb. Signif.*

**PEDEM PONERE.** L. Lat. In civil and old English law. To put or place the foot. A figurative expression used to denote the taking possession of lands; which was done by standing upon or walking over them, or symbolically by merely placing the foot upon the ground; (Fr. *mettre del pee en nosme de seisine*. *Britt.* cc. 35, 36, 42, 43.) *Calv. Lex.* See *Pedis positio*, *Possessio*. Otherwise expressed *pedem apponere*. *Fleta*, lib. 3, c. 15, § 6.

**PEDETENTIM.** Lat. [from *pes*, foot.] Foot by foot. Lord Ellenborough, 2 *M. & S.* 546.

**PEDIS ABSCISSIO.** Lat. In old criminal law. The cutting off a foot; a punishment anciently inflicted instead of death. See *Fleta*, lib. 1, c. 38, § 8.

**PEDIS POSITIO.** Lat. In civil and old English law. A putting or placing of the foot. *Fleta*, lib. 3, c. 15, § 5. *Id.* lib. 4, c. 30. A term used to denote the possession of lands by actual corporal entry upon them, and sometimes as the analysis of the word *possessio* (q. v.) itself. Called also *pedis possessio*. Thompson, C. J. 15 *Johns. R.* 117. Gibson, C. J. 5 *Penn. St.* (Barr's) *R.* 303.

**PEE.** L. Fr. [from Lat. *pes*.] Foot; the foot. *Le mettre del pee en le mees en nosme de seisine*; the putting of the foot in the house, in name of seisin. *Britt.* c. 43. See *Pedem ponere*.

Foot; the foot. A part of a fine. *Per le pee est la fine*. *Yearb. M. 3 Edw. III.* 3.

**PEER.** [L. Fr. *peir*, *pair*, *pere*; from

Lat. *par*, equal.] An equal; one of the same rank.

In feudal and old European law. The vassal of a lord, in his capacity of judge in the lord's court. *Espirit des Loix*, liv. 28, c. 27. See *Peers*.

**PEERS.** [L. Fr. *pairs*; Lat. *pares*.] In feudal law. The vassals of a lord who sat in his court as judges of their co-vassals, and were called *peers*, as being each other's equals, or of the same condition. *Espirit des Loix*, liv. 28, c. 27. *Id.* liv. 30, c. 18. Hence the expressions "trial by peers" and "judgment of peers," as used in English and American law to denote *trial by jury*. *Magna Charta*, c. 29. 4 *Bl. Com.* 349. 2 *Kent's Com.* 13, and note.

In English law. The nobility of the kingdom, who, though different in rank, are all peers (equals) in respect of their nobility. 1 *Bl. Com.* 403. The *Magna Charta* of King John (c. 21,) provided that earls and barons should not be amerced unless by their peers, (*nisi per pares suos*.) See *Mag. Cart.* 9 Hen. III. c. 14. In cases of treason, felony and misprision of the same, a nobleman is always tried by his *peers*, the word having, in this application, both its ancient and modern meaning.\* 1 *Bl. Com.* 401. The word *peers* is exclusively used to denote the *lords temporal*. *Id. ibid.* 4 *Id.* 264.

**PEES.** L. Fr. Peace. *Encontre nostre pees*; against our peace. *Britt.* fol. 2. *De nostre pees*. *Id.* c. 16.

The concord in a fine of lands. *Kelham*. See *Peace*.

**PEINE.** L. Fr. [from Lat. *pœna*.] Punishment. *Kelham*.

**PEISIBLE.** L. Fr. Peaceable. *Si ilz eyent eu peisable seisine*; if they have had peaceable seisin. *Britt.* c. 42. *Id.* c. 47.

*Peisiblement*; peaceably. *Que il avera peisiblement tenu*; which he shall have peaceably held. *Id.* c. 42.

**PEISON.** L. Fr. [L. Lat. *persona*.] Mast. A general name for acorns, nuts and other similar produce of trees. *Britt.* c. 55.

**PELLETUM.** L. Lat. A bullet. 5 *Co.* 120 a, 122 a, *Long's case*. Called a *pellet*. *Id. ibid.*

**PELLEX.** Lat. In the Roman law. A concubine. *Dig.* 50. 16. 144.

**PENAL.** [from Lat. *pœnalis*, from *pœna*, punishment or penalty.] Enacting punishment. *Webster*. Imposing a punishment or penalty. See *Penal statute*.

Connected with a penalty, either as the object or consequence of an action.

**PENAL ACTION.** [Lat. *actio pœnalis*.] In practice. An action upon a penal statute; an action for the recovery of a penalty given by statute. 3 *Steph. Com.* 535, 536.

**PENAL BILL.** An instrument formerly in use, by which a party bound himself to pay a certain sum or sums of money, or to do certain acts; or, in default thereof, to pay a certain specified sum by way of penalty. These instruments have been superseded by bonds with conditions.

**PENAL STATUTE.** A statute which punishes; a statute which forbids an act, and punishes the doing or commission of it. A statute enacting or imposing a penalty or punishment on the commission of a certain offence.\* 1 *Steph. Com.* 68.

**PENALTY.** [Lat. *pœna*.] A punishment; a punishment imposed by statute as a consequence of the commission of a certain specified offence.

A pecuniary punishment; a sum of money imposed by statute to be paid as a punishment for the commission of a certain act.

A sum of money agreed upon, and fixed by the parties to a contract, to be paid in case of its non-performance by either: being intended to secure the performance of the contract.

A sum of money mentioned in the obligatory part of a bond, to be paid by the obligor, absolutely in its terms, but in fact (taken with reference to the condition annexed) only in case of non-performance of the condition.

The legal operation of a penalty, properly so called, is not to create a forfeiture of the entire sum named, but only to cover the actual damages occasioned by the breach of contract; and therefore, on payment of such damages, or in case of a bond, of the principal and interest actually due, the party who has incurred the penalty will be relieved or discharged from it. But in the case of what is termed *liquidated damages*, the whole of the precise sum named may be exacted of the party who is in default, and the court will not interfere to relieve him. See 2 *Steph. Com.* 159—162. 2 *Story's Eq. Jur.* §§ 1313—1326. See *Liquidated damages*.

**PENCIL WRITING** is a valid mode of writing, so long as legible. A note written

in pencil was held valid while legible. 14 *Texas R.* 329. And it has been held that a will written with a pencil, could not on this account be annulled. 1 *Phillim. R.* 1. 2 *Id.* 173.

**PENDANT, Pendent.** O. Eng. and L. Fr. [from Lat. *pendens*.] Pending; during. "*Pendant* the writ." 1 *Leon.* 44.

**PENDENS.** Lat. [from *pendere*, to hang.] Hanging; pending. See *Lis pendens*.

**PENDENTE.** Lat. Pending; or, in the literal old English, hanging, (q. v.)

**PENDENTE LITE.** Lat. Pending the suit; during the actual progress of a suit; during litigation. *Lite pendente. Fleta*, lib. 2, c. 54, § 23.

**Pendente lite nihil innovetur, [innovandum.]** Pending the suit nothing should be changed. *Co. Litt.* 344 b. During the pendency of a suit, no change should be made in the property which is the subject of it, as by a conveyance by one of the parties, which may affect the rights of his opponent. *Cross on Lien*, 140. The effect of this maxim, however, is not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. 1 *Story's Eq. Jur.* § 406. See 20 *Howard's R.* 106.

**PENDERE.** Lat. In the civil law. To hang; to be in suspense. *Calv. Lex.*

To be attached, as fruit to a tree. *Id.* See *Fructus pendentes*.

To depend upon, or grow out of. *Id.*

To pay, as a penalty. *Id.*

**PENDICLE.** Sc. In Scotch law. A piece of ground. 7 *Wils. & Shaw's R.* 245. "All and hail that small piece or pendicle of arable land." 1 *Bell's App. Cas.* 499.

**PENDING, (or DEPENDING.)** A term applied to a writ, sometimes from the day of the *teste*, and sometimes from the day of the return. 5 *Co.* 47 a, 47 b, *Gilbert Littleton's case*.

**PENDRE.** L. Fr. [from Lat. *pendere*.] To hang, (execute.) *Pendu*; hung, or hanged. *Jugement de estre treyne et pendu*; judgment to be drawn and hanged. *Britt.* c. 23. The L. Lat. *pendutus*, derived from *pendu*, occurs in the laws of the Ripuarians, tit. 79. *Spelman*.

**PENES.** Lat. In the possession; in one's possession or power; under one's control. A distinction was made in the civil law, between this term and *apud*, (with,

or in;) which had a less forcible and comprehensive meaning. *Dig.* 50. 16. 63.

**PENSA.** L. Lat. [from Lat. *pendere*, to weigh.] In old English law. A weight. *Ad pensam*; by weight. The ancient way of paying into the exchequer as much money for a pound sterling as weighed twelve ounces troy. *Lowndes' Essay upon Coin*, 4. *Cowell.* This was distinguished from payment *de numero*, by count.

In old records. A wey (weigh) of salt or cheese, containing two hundred and fifty-six pounds. *Cowell.*

**PENSATA.** L. Lat. Weighed. See *Libra pensa.*

**PENSIO.** Lat. [from *pendere*, to pay.] In the civil law. A payment, properly, for the use of a thing. *Calv. Lex.*

A rent; a payment for the use and occupation of another's house, (Gr. *ἐνοικίον.*) *Id.*

**PENSION.** L. Fr. [from Lat. *pensio*, q. v.] In old English law. A payment of rent, (L. Lat. *redditus.*) *Pension de chambre*; rent from the chamber or coffer, (*redditus de camera*;) an annuity. *Britt.* c. 68. See *Annuity.*

**PENSION.** In Scotch law. An annual rent. *Skene de Verb. Signif.*

**PENSION.** Span. [from *pensio*, q. v.] In Spanish law. Rent; a rent. *White's New Recop.* b. 2, c. 2, § 3.

**PENSION.** In English practice. An annual payment made by each member of the Inns of Court. *Cowell. Holthouse.*

An assembly of the members of the society of Gray's Inn; to consult of their affairs. *Id.*

**PENNY, Peny.** [from Sax. *penig*; Lat. *denarius*, q. v.] The ancient current silver money of England. 2 *Inst.* 575. See *Denarius.*

Money in general; tribute money. See *Aver penny.*

**PEONIA.** Span. In Spanish American law. A lot of land of fifty feet front, and one hundred feet deep. 2 *White's Recop.* [38,] 49. Originally the portion granted to foot soldiers, of spoils taken or lands conquered in war. 12 *Peters' R.* 442—444, notes.

**PER.** Lat. By. *Per curiam*, (q. v.)

By; through, in consequence of. *Per infortunium*, (q. v.)

By; according to. *Per stirpes*, (q. v.)

For; during. *Per quadraginta dies*; for forty days. *Bract.* fol. 96.

**PER ÆS ET LIBRAM.** Lat. In the

Roman law. By brazen coin and balance. A term applied to the ceremony of emancipating a son, which was conducted in the form of a sale, the purchaser striking with a brazen coin a balance held by a person called *libripens*, (balance holder.) *Adam's Rom. Ant.* 52. Wills were anciently made with this formality. *Inst.* 2. 10. 1.

**PER ALLUVIONEM.** Lat. In the civil law. By alluvion. *Per alluvionem id videtur adjici, quod ita paulatim adjicitur, ut intelligere non possimus quantum quoquo momento temporis adjiciatur*; that is considered to be added by alluvion, which is added so gradually that we cannot perceive how much is added at any moment of time. *Dig.* 41. 1. 7. 1. Increase *per alluvionem* or *projectionem* is when the sea, by casting up sand and earth, doth by degrees increase the land, and shut itself out further than the ancient bounds went. *Hale de Jur. Mar.* pars 1, c. 4. See *Fleta*, lib. 3, c. 2, § 6. *Broom's Max.* [123.]

**PER ANNULUM ET BACULUM.** L. Lat. In old English law. By ring and staff, or crozier. The symbolical mode of conferring an ecclesiastical investiture. 1 *Bl. Com.* 378, 379. See *Annulus et baculus.*

**PER ANNUM.** Lat. By the year; for the space of a year. *Fleta*, lib. 2, c. 71, §§ 3—12. A common expression still in use.

**PER AVERSIONEM.** Lat. In the civil law. By turning away. A term applied to that kind of sale where the goods are taken in bulk, and not by weight or measure, and for a single price; or where a piece of land is sold as containing in gross, by estimation, a certain number of acres. *Pothier, Contr. of Sale*, num. 256, 309. 1 *Story's Eq. Jur.* § 144 a. So called because the buyer acts without particular examination or discrimination, turning his face, as it were, away. *Calv. Lex. voc. Aversione.* It seems to be nearly of the same import with the common English phrases "in gross," "by the lot" or "lump."

**PER BOUCHE.** L. Fr. By the mouth; orally. 3 *How. St. Trials*, 1024.

**PER CAPITA.** Lat. By heads; according to the number of persons; as individuals; share and share alike. A term of the civil law, extensively used in the modern English and American law of distribution and descent of estates. Where several persons are equally near of kin to a deceased intestate, or stand in equal degree,

they take equally *per capita*, that is, according to their own persons, and in their own rights, without reference to the stocks from which they have sprung. 2 *Bl. Com.* 218. 2 *Kent's Com.* 425—428, and notes. 4 *Id.* 391, 392. 2 *Williams on Exec.* 1285. 2 *Hilliard's Real Prop.* 194. See *Capita. Caput, In capita.*

**PER CONSEQUENS.** Lat. By consequence; consequently. *Yearb.* M. 9 Edw. III. 8.

**PER CONSIDERATIONEM CURIÆ.** L. Lat. In old practice. By the consideration (judgment) of the court. *Yearb.* M. 1 Edw. II. 2.

**PER CORPUS.** Lat. In old English law. By the body. By the *duellum* or battel, as distinguished from *per patriam*, by the country. *Bract.* fol. 133 b. *Fleta*, lib. 1, c. 31, § 2.

By the body. By taking the body, as on an attachment. *Fleta*, lib. 2, c. 60, § 33.

**PER CUR.** A common abbreviation of *per curiam*, (q. v.)

**PER CURIAM.** L. Lat. In practice. By the court. A phrase still used in the reports, and in some writs.

**PER DEFALTAM.** L. Lat. In old practice. By default. *Reg. Jud.* 47.

**PER EXTENSUM.** L. Lat. In old practice. At length. *Clerke's Prax. Cur. Adm.* tit. 6.

**PER FORMAM DONI.** L. Lat. In English law. By the form of the gift; by the designation of the giver, and not by the operation of law. 2 *Bl. Com.* 113, 191. See *Formedon.*

**PER FRAUDEM.** Lat. In English law. By fraud; fraudulently. Lord Ellenborough, 12 *East*, 409. *Per fraudem et covinam*; by fraud and covin. 2 *Mod.* 36.

**PER INCURIAM.** L. Lat. Through inadvertence. 35 *Eng. Law & Eq. R.* 302.

**PER INDUSTRIAM HOMINIS.** Lat. In old English law. By human industry. A term applied to the reclaiming or taming of wild animals by art, industry and education. 2 *Bl. Com.* 391.

**PER INFORTUNIUM.** L. Lat. In criminal law. By misadventure. *Fleta*, lib. 1, c. 23, § 5. 4 *Bl. Com.* 182. Homicide of a certain kind is so called. See *Homicide per infortunium.*

**PER LEGALE JUDICIUM PARIUM SUORUM.** L. Lat. In old English law.

By the lawful judgment of his peers. *Mag. Cart.* 9 Hen. III. c. 29.

**PER LEGEM ANGLIÆ.** L. Lat. By the law of England; by the curtesy. *Fleta*, lib. 2, c. 54, § 18.

**PER LEGEM TERRÆ.** L. Lat. By the law of the land. *Mag. Cart.* 9 Hen. III. c. 29. By due process of law. 3 *How. St. Trials*, 152—154. See *Lex terræ.*

**PER METAS ET BUNDAS.** L. Lat. In old English law. By metes and bounds. See *Bunda.*

**PER MISADVENTURE.** Lat. and Eng. In old English law. By mischance. 4 *Bl. Com.* 182. The same with *per infortunium*, (q. v.)

**PER MY.** L. Fr. An old form of *parmy*, or *parmi*, (q. v.) *Yearb.* T. 1 Edw. II. 5.

**PER MY ET PER TOUT.** L. Fr. By the half or moiety, and by all; having each the entire possession as well of every parcel as of the whole. 2 *Bl. Com.* 182. A term used as descriptive of the mode of possession by joint-tenants. *Id. ibid.* 1 *Hilliard's Real Prop.* 565.

**PER NOMEN.** Lat. By the name. *Freem.* 77.

**PER NORMAM LEGIS COMMUNIS.** Lat. By the rule of the common law. *Per normam statuti*; by the rule of the statute. *Bacon's Arg.* Low's case of Tenures, *Works*, iv. 242.

**PER OMNES.** Lat. By all (the judges.) A phrase in the old reports. 6 *Mod.* 289.

**PER PAIS.** L. Fr. By the country; by jury. 3 *Bl. Com.* 348, 349. See *Pais.*

**PER PARES.** L. Lat. In old English law. By the peers. *Per pares suos*; by their peers. *Mag. Cart.* 9 Hen. III. c. 14.

**PER PATRIAM.** L. Lat. In old English law. By the country; by a jury. *Fleta*, lib. 1, c. 31, § 3.

**PER PLEGIUM.** L. Lat. In old English law. By pledge or surety; on bail. *Bract.* fol. 153.

**PER PROC.** An abbreviation of *per procuracionem*, by appointment or power.

**PER QUOD.** L. Lat. In pleading. By which; whereby. Words introducing a consequence of law from matters of fact before stated. Treby, C. J. 1 *Ld. Raym.* 412. The initial and emphatic words of that clause in the old Latin forms of declarations, in which the plaintiff stated the *special damage* he had sustained, as the *consequence* of the act or acts previously mentioned. 3 *Bl. Com.* 124. Shaw, C.

J. 2 *Metcalf's R.* 469. Now used as the name of the clause, which is literally translated in the modern precedents. The words *per quod* occur in a similar connection in the form of the old Latin writs of trespass. *Reg. Orig.* 95.

**PER QUOD CONSORTIUM AMISIT.** L. Lat. In old pleading. Whereby he lost the company or society (of his wife.) A phrase used in the old declarations in actions of trespass by a husband, for beating or ill using his wife, descriptive of the special damage he had sustained. 3 *Bl. Com.* 140. *Cro. Jac.* 501, 538. *Hale's Anal.* sect. xl.

**PER QUOD SERVITIUM AMISIT.** L. Lat. In old pleading. Whereby he lost the service (of his servant.) A phrase used in the old declarations in actions of trespass by a master, for beating or ill using his servant, descriptive of the special damage he had himself sustained. 3 *Bl. Com.* 142. 9 *Co.* 113 a. *Hale's Anal.* sect. xl.

**PER SALTUM.** Lat. By a leap or bound; by a sudden movement; passing over certain proceedings. "The parties have proceeded *per saltum*." Lord Ellenborough, 8 *East*, 511.

**PER SE.** By itself; of itself. Fraud *per se*. 3 *Pickering's R.* 257.

**PER SERVITIUM.** L. Lat. By the service. *Per servitia debita*; by the services due. *Per servitia antehac consueta*; by the services hitherto accustomed. *Bacon's Arg.* Low's case of Tenures; *Works*, iv. 236, 238.

**PER STIRPES.** Lat. By stocks or roots; as representatives of stocks; in right of stocks. A term of the civil law, extensively used in the modern English and American law, to denote that mode of the distribution and descent of intestate's estates, where the parties entitled take the shares which their *stocks*, (such as a father) if living, would have taken. 2 *Bl. Com.* 217, 218. 2 *Kent's Com.* 425. 4 *Id.* 390—392. See *Stirps*, *Stirpes*, *Per capita*.

**PER TOTAM CURIAM.** L. Lat. By the whole court. A common phrase in the old reports.

**PER TOUT LE COURT.** L. Fr. By all the court. *Yearb. P.* 3 Hen. VI. 20.

**PER UNIVERSITATEM.** Lat. In the civil law. By the whole or entirety; as a whole; in general. A term applied to the acquisition of entire estates, as dis-

tinguished from single or separate articles of property, (*singulæ res*.) *Inst.* 2. 9. 7.

**PER VADIUM.** L. Lat. In old practice. By gage. Words in the old writs of attachment or *pone*. 3 *Bl. Com.* 280.

**PER VERBA DE FUTURO.** L. Lat. By words of the future (tense.) A phrase applied to contracts of marriage. 1 *Bl. Com.* 439. 2 *Kent's Com.* 87.

**PER VERBA DE PRÆSENTI.** L. Lat. By words of the present (tense;) as, "I marry you;" "you and I are man and wife." Lord Holt, C. J. *Salk.* 437. A phrase applied to contracts of marriage. 1 *Bl. Com.* 439.

**PER VISUM ECCLESIAE.** L. Lat. In old English law. By view of the church; under the supervision of the church. The disposition of intestate's goods *per visum ecclesiae*, was one of the articles confirmed to the prelates by King John's Magna Charta. 3 *Bl. Com.* 96.

**PER VIVAM VOCEM.** L. Lat. In old English law. By the living voice; the same with *vivâ voce*. *Bract.* fol. 95.

**PER, (by,) CUI, (to whom,) and POST, (after.)** L. Lat. In old practice. Words used as descriptive of the different forms of writs of entries, according to the degrees in which they were brought. 3 *Bl. Com.* 181. See *Entry*, *Writ of*.

**PERA.** L. Lat. In old Scotch law. A satchel; a poke, budget or bag for provisions. 1 *Pitc. Cr. Trials*, part 2, p. 17.

**PERAMBULATIO.** L. Lat. In old English law. Perambulation; a perambulation. *Fleta*, lib. 4, c. 15, § 1.

**PERAMBULATION.** [Lat. *perambulation*, from *perambulare*, from *per*, through, and *ambulare*, to walk.] A walking through, about or over; a going round a place to settle its boundaries, or for other purposes. See *De perambulatione faciendâ*. Sir William Blackstone has given at length the form of a perambulation of a forest, from the Rolls of 29 Edw. I. *Bl. Mag. Cart.* Introd. cviii. note. The perambulation was made before justices assigned for the purpose, in presence of the foresters and verderors, by the oath of twenty-four men, who traced the boundaries of the forest minutely by metes and bounds; and their perambulation was afterwards enrolled of record.

**PERAMONT.** L. Fr. Above. *Kelham*. See *Paramount*.

**PERAVALLE.** L. Fr. Below. *Pera-vaire de son molin*; below his mill. *Yearb.*

M. 7 Edw. III. 37. "The defendant challenged *touts peravaile*." *Dyer*, 25.

PERCENNARIUS. L. Lat. In old English law. A parcener; one of several commoners. *Fleta*, lib. 4, c. 24, § 11.

PERCEPTURA. L. Lat. In old records. A wear; a place in a river made up with banks, dams, &c. for the better convenience of preserving and taking fish. *Paroch. Ant.* 120. *Cowell*.

PERCH. [L. Lat. *pertica*.] A measure of land containing five yards and a half, or sixteen feet and a half in length; otherwise called a rod or pole. *Cowell*. 1 *N. Y. Rev. Stat.* [607,] 617, § 6. Originally of no fixed length. *Spelman*, voc. *Pertica*.

PERCLOSE, *Perclos*. L. Fr. In old practice. The latter part or conclusion, (of a writ, plea or indictment.) *Yearb.* M. 7 Hen. VI. 18. 1 *Leon.* 109. 3 *Id.* 230.

PERCUTERE. Lat. In old English law. To strike. *Fleta*, lib. 2, c. 1, § 4. *Percutere duellum*; to strike the duel; to engage or join in the combat. *Bract.* fol. 139.

*Percussit*; (he) struck. *Fleta*, *ub. sup.* An essential word in old indictments. 5 *Co.* 122 a, *Long's case*. 11 *Mod.* 229.

PERDONARE, *Pardonare*. L. Lat. In old English law. To pardon. *Bract.* fol. 127. See *Pardonare*.

*Perdonavimus*; we have pardoned. An emphatic word in the old charters of pardon. *Reg. Orig.* 310. *Dyer*, 34.

*Perdonatio*. A pardoning; a pardon. *Carta perdonationis*; a charter of pardon. See *Reg. Orig.* 308—312 b.

PERDRE. L. Fr. To lose. *Pert*; loses. *Fet Assaver*, § 45. *Perdu*; lost. *Id.* § 46.

PERDUELLIO. Lat. [from *perduellis*, an open enemy.] In the civil law. Treason; the crime of open hostility against the state or prince; whatever was attempted directly against the being or safety of the republic, or of the prince, or his ministers. *Calv. Lex. Inst.* 3. 1. 5. *Hallifax*, *Anal.* b. 3, c. 12, num. 20. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 18, § 1341.

PEREGRINATIO. Lat. In old English law. Pilgrimage. *Fleta*, lib. 6, c. 8, § 1.

PEREMPTORIUS. Lat. [from *perimere*, to destroy; to take away or defeat entirely.] In the civil law. That which destroys or defeats, not for a time, but forever. Exceptions were so called because

they operated as a perpetual bar to the action, and entirely destroyed the foundation of it; (*perpetuæ et peremptoriæ sunt, quæ semper agentibus obstant, et semper rem de qua agitur perimunt*.) *Inst.* 4. 13. 9. The term *exceptio peremptoria*, was taken from the civil law by Bracton, and hence the English *peremptory*, as applied to a defendant's plea. *Bract.* fol. 240, 399 b. *Fleta*, lib. 6, c. 36, § 3.

PEREMPTORY. [from Lat. *peremptorius*, q. v.] Literally and radically, that which destroys, (*quod perimit*), or wholly and at once defeats; as a *peremptory plea*, (q. v.)

That which disposes of a matter at once, and without delay; that which admits of no delay or argument; absolute; imperative; decisive; final. As a *peremptory mandamus* or rule, (qq. v.)

That which requires no cause to be shown; arbitrary; capricious; as a *peremptory challenge*, (q. v.)

PEREMPTORY CHALLENGE. In criminal practice. A species of challenge which a prisoner is allowed to have against a certain number of jurors, without showing any cause. See *Challenge peremptory*.

PEREMPTORY EXCEPTION. A pleading having the legal effect of a general demurrer. 1 *Texas R.* 364.

PEREMPTORY MANDAMUS. In practice. A writ of *mandamus* which absolutely requires an act to be done, without any alternative of showing cause against it. Usually granted on the return of an alternative *mandamus*, where such return is found insufficient in law or false in fact. 3 *Steph. Com.* 683, 694. 2 *Burr. Pr.* 180.

PEREMPTORY PLEA. In practice. A plea founded upon matter which tends to impeach the plaintiff's right of action itself, or goes to destroy the ground of action entirely; a plea in bar of the action.\* *Steph. Pl.* 46. *Id.* Appendix, Note (19.) 3 *Steph. Com.* 576.

PEREMPTORY RULE. In practice. An absolute rule; a rule without any condition or alternative of showing cause. See *Absolute rule*.

PERENTER, *Perentre*. L. Fr. Between. *Litt. sect.* 58.

PERFECT. In practice. To complete in form of law. To perfect bail is to justify after exception, so as to render them absolute. 1 *Burr. Pr.* 110. To perfect judgment is to enter it on record, and to file and docket the record. *Id.* 263.

*Perfectum est cui nihil deest secundum sue perfectionis vel naturæ modum.* That is perfect to which nothing is wanting, according to the measure of its perfection or nature. *Hob.* 151.

**PERGAMENUM.** L. Lat. In old practice. Parchment. *In pergameno scribi fecit.* 1 *And.* 54.

**PERICULOSUS.** Lat. [from *periculum*, danger.] Dangerous; perilous. *Periculosum est res novas et inusitatas inducere.* It is perilous or hazardous to introduce new and untried things. *Co. Litt.* 379 a. New inventions (though of a learned judge in his own profession,) are full of inconvenience. *Id. ibid.*

*Periculosum existimo quod bonorum virorum non comprobatur exemplo.* I think that dangerous which is not warranted or approved by the example of good men. 9 *Co.* 97 b, *Sir George Reynel's case.*

**PERICULUM.** Lat. In the civil law. Peril; danger; hazard; risk. *Dig.* 18. 6. *Cod.* 4. 48. *Fleta*, lib. 2, c. 58, § 8.

*Periculum rei venditæ, nondum traditæ, est emptoris.* The risk of an article sold, but not yet delivered, is the buyer's. When the contract of sale has been rendered binding by giving earnest, or by part payment, or part delivery, or by a compliance with the requisitions of the statute of frauds, the property, and with it the risk, attaches to the purchaser. 2 *Kent's Com.* 498, 499. This maxim is taken from the civil law, though it is differently applied, and is thus expressed in the Institutes: *Periculum rei venditæ statim ad emptorem pertinet, tametsi adhuc ea res emptori tradita non sit*; the risk of a thing sold immediately attaches to the buyer, although the article itself be not yet delivered to him. *Inst.* 3. 24. 3. In the Digests, the rule was thus expressed: *Perfecta emtione, periculum ad emptorem respiciet.* *Dig.* 18. 6. 8. In the Code, *post perfectam venditionem, omne commodum et incommodum quod rei venditæ contingit, ad emptorem pertinet.* *Cod.* 4. 48.

**PERILS OF THE SEA, (or SEAS.)** In maritime and insurance law. Natural accidents peculiar to the sea, which do not happen by the intervention of man, nor are to be prevented by human prudence. 3 *Kent's Com.* 216. Piracy, however, is a peril of the seas. *Id. ibid.* 1 *Phillips on Ins.* 648. Under *perils of the sea* are comprehended those of the winds, waves, lightning, rocks, shoals, running foul of

other vessels, and in general all causes of loss and damage to the property insured, arising from the elements and inevitable accidents, other than those of capture and detention. *Id.* 635. See *Story on Bailm.* §§ 512—522. Under "perils of the seas, rivers," &c. in a policy, the ordinary risks of canal navigation are covered, although canals are not mentioned. 6 *Ohio St. R.* 553.

**PERINDE VALERE.** L. Lat. (To be equally valid.) In English ecclesiastical law. The name of a writ of dispensation granted to a clerk that being defective in his capacity to a benefice or other ecclesiastical function, was, *de facto*, admitted to it. So called from the emphatic words of the Latin form, the faculty being declared to be *equally effectual* to the party dispensed with, as if he had been actually capable of the thing for which he was dispensed with, at the time of his admission. *Stat.* 25 *Hen. VIII.* c. 21. *Cowell.*

**PERIOD.** A space of time; any portion of complete time.

"The word *period* has its etymological meaning, but it also has a distinctive signification, according to the subject with which it may be used in connection. It may mean any portion of complete time, from a thousand years or less to the period of a day; and when used to designate an act to be done or to be begun, though its completion may take an uncertain time, as for instance the act of exportation, it must mean the day on which the exportation commences, or it would be an unmeaning and useless word in its connection in the statute." Wayne, J. 20 *Howard's R.* 579.

**PERJURIUM.** Lat. [from *perjurare*, to forswear; from *per* and *jurare*, to swear.] In civil and old English law. Perjury; the breach of an oath; the making a false oath. *Cum contigerit quod juratores falsum fecerint sacramentum et ita commiserint perjurium*; when it shall happen that the jurors make a false oath, and so commit perjury. *Bract.* fol. 288 b. *Fleta* defines it to be a lie, confirmed by an oath; (*mendacium cum juramento firmatum.*) *Fleta*, lib. 5, c. 22, § 3; lib. 2, c. 1, § 20.

**PERJURY.** [from Lat. *perjurium*, q. v.] In criminal law. False swearing; the making a false oath; the breach of an oath. Anciently called *oath-breach*, or *oath-*

broken. See *Othesworth*.—The judicial affirmation of a falsehood on oath. *Bell's Dict.* 2 *Swinton's R.* 300.—A crime committed when a *lawful* oath is administered, in some *judicial* proceeding, to a person who swears *wilfully*, absolutely and *falsely*, in a matter *material* to the issue or point in question. 3 *Inst.* 164. 4 *Bl. Com.* 137. 4 *Steph. Com.* 267. See 2 *Russell on Crimes*, 596, (Am. ed.) and the criticism in the note. *Wharton's Am. Crim. Law*, §§ 2198—2232. This common law definition has been modified in England by statute. 4 *Steph. Com.* 267. 2 *Russell on Crimes*, 604, *et seq.*

In the United States, the definition of perjury is generally fixed by the local laws of each state. See *Wharton's Am. Crim. Law*, §§ 2169—2197. *Lewis' U. S. Crim. Law*, 547—557. 2 *Russell on Crimes*, (Am. ed. 1850,) 596, 597, note.

PERMISSIVE WASTE. That kind of waste which is a matter of omission only; as by suffering a house to fall for want of necessary reparations. 2 *Bl. Com.* 281. 3 *Steph. Com.* 503. 4 *Kent's Com.* 76, *et seq.* 1 *Hilliard's Real Prop.* 266.

PERMUTATIO. Lat. [from *permutare*, to exchange.] In the civil law. Exchange; barter. *Dig.* 19. 4. *Cod.* 4. 64.

PERNANCY. [from L. Fr. *parner*, to take.] Taking; a taking or receiving, as of the profits of an estate. Actual *pernancy* of the profits of an estate is the taking, perception or receipt of the rents and other advantages arising therefrom. 2 *Bl. Com.* 163.

PERNOCTARE. Lat. [from *per*, through, and *nox*, night.] In the civil law. To pass the night; to pass the whole night. *Dig.* 50. 16. 166.

PERNOR. [from L. Fr. *parnour*, or *pernour*, q. v.] A taker. *Pernor* of profits is the taker or receiver of the profits of an estate. *Cowell*.

PERNOUR. L. Fr. A taker. *Le pernour on le detenour*; the taker or the detainer. *Britt.* c. 27.

*Perpetua lex est nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit ab initio non valet.* It is a perpetual law that no human and positive law can be perpetual, and a clause [in a law] which precludes the power of abrogation is void *ab initio*. *Bacon's Max.* 77, in reg. 19.

PERPETUAL CURACY. In English

ecclesiastical law. A place of divine worship, having parochial rights (particularly those of baptism and sepulture,) of which the incumbent is not removable at pleasure by the rector or vicar of any supposed mother church. 1 *Wooddes. Lect.* 198.

PERPETUATING TESTIMONY. In practice. The taking of testimony in order to preserve it for future use, as where it is in danger of being lost before the matter to which it relates can be made the subject of judicial investigation. This is usually done by bill filed in equity for that purpose, and sometimes by proceedings at law. 3 *Bl. Com.* 450. 2 *Story's Eq. Jur.* § 1505, *et seq.* *Story's Eq. Pl.* § 600, *et seq.*

PERPETUITY. The quality of indefinite duration without change. A quality by which an estate becomes inalienable either perpetually, or for a very long period. A modification of an estate by which it is made inalienable perpetually or indefinitely. See 4 *Kent's Com.* 264.

The estate itself, so modified or perpetuated.

In more technical language,—a future limitation, restraining the owner of an estate from aliening the fee-simple of the property, discharged of such future use or estate, before the event is determined, or the period is arrived, when such future use or estate is to arise. If that event or period be within the bounds prescribed by law, it is not a perpetuity. *Sanders on Uses and Trusts*, 196.—A future limitation, whether executory or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of, or will not necessarily vest within, the period fixed and prescribed by law for the creation of future estates and interests; and which is not destructible by the persons for the time being entitled to the property subject to the future limitation, except with the concurrence of the individual interested under that limitation. *Lewis on Perpetuity*, 164.

PERQUIRERE. L. Lat. [from *per*, through, and *querere*, to obtain.] In feudal law. To gain or acquire; to acquire by one's own act; to purchase. *Breve perquirere*; to purchase a writ. *Cowell*.

*Perquisitio*. Purchase. 2 *Bl. Com.* 241. Acquisition by one's own act or agreement, and not by descent. *Id. ibid.* See *Purchase*.

*Perquisitor.* A purchaser; one who first acquired an estate to his family; one who acquired an estate by sale, by gift, or by any other method, except only that of descent. 2 *Bl. Com.* 220.

*Perquisitum.* Purchase. *Bract.* fol. 65. *Co. Litt.* 3 b, 18 b. An estate acquired by purchase, that is, by one's own act, and not by descent; (*prædium quod quis non à patre vel majoribus possidet, sed quo suâ industriâ vel pecuniis comparato gaudet.*) *Spelman.*

*PERSECUTIO.* Lat. [from *persequi*, q. v.] In the civil law. A following after; a pursuing at law; a suit or prosecution.

Properly, that kind of judicial proceeding before the prætor which was called *extraordinary.* *Calv. Lex.*

In a general sense, any judicial proceeding, including not only actions (*actiones*) properly so called, but other proceedings also. *Id.*

*PERSEQUI.* Lat. In the civil law. To follow after; to pursue or claim in form of law. An action is called a *jus persequendi.* See *Actio.*

*PERSEWAR.* O. Sc. In old Scotch law. Pursuer; plaintiff or prosecutor. See *Pursuer.*

*PERSON.* [from Lat. *persona*, q. v.] A human being, considered as the subject of rights, as distinguished from a *thing*, (*res*), whether animate or inanimate. See *Persona.*

*PERSONA.* Lat. In civil and old English law. A person. *Persona est homo, cum statu quodam consideratus*; a person is a human being, considered with reference to a certain *status*, condition or quality. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, § 75. *Homo vocabulum est naturæ*; *persona, juris civilis*; man is a term of nature; person, a term of law. *Calv. Lex.* *Omnis persona est homo, sed non vicissim*; every person is a man, (human being,) but not vice versa. *Id.* *Persona* is a character or capacity, *homo cum statu*, a man under particular circumstances, conditions and relations. *Tayl. Civ. Law*, 247.

*Persona conjuncta æquiparatur interesse proprio.* A personal connection [literally, a united person, union with a person,] is equivalent to one's own interest; nearness of blood is as good a consideration as one's own interest. *Bacon's Max.* 72, reg. 18. "The law hath that respect of nature and conjunction of blood, as in divers cases it

compareth and matcheth nearness of blood with consideration of profit and interest, yea, and in some cases alloweth of it more strongly." *Id. ibid.* 13 *Mees. & W.* 253, 254, arg. The interest of a personal connection is sometimes regarded in law as that of the individual himself. *Broom's Max.* [407.]

*PERSONA.* Lat. In civil and old English law. Character; capacity. See *Persona standi in judicio.*

*PERSONA.* L. Lat. In old English law. A parson. *Glanv.* lib. 4, c. 1. *Spelman.* 1 *Bl. Com.* 384. *Fleta*, lib. 2, c. 60, § 29.

*PERSONA STANDI IN JUDICIO.* L. Lat. Capacity of standing in court or in judgment; capacity to be a party to an action; capacity or ability to sue. See *Personable.* A phrase frequently used in Bracton, and derived probably from that source. *Habent enim servi personam standi in judicio contra omnes de injuriis sibi factis*; for slaves have a capacity of prosecuting against all persons for injuries done to themselves. *Bract.* fol. 155 b. A slave might in certain cases bring an assise against his own lord; much more shall he have a right of suit against one who had no right in him; (*multo fortius personam habebit standi in judicio versus eum qui nihil juris habet in eo.*) *Id.* fol. 196. The phrase is of common occurrence in the modern books. 1 *Rob. Adm. R.* 198, 201. *Spencer, J.* 15 *Johns. R.* 83. 1 *Kent's Com.* 68.

*PERSONABLE.* [L. Lat. *personabilis*, from *persona*, capacity.] In old English law. Able to maintain a plea in court; having capacity to sue. *Cowell.* Derived probably from the phrase *persona standi in judicio*, (q. v.)

Of capacity to take a thing granted or given. *Plowd.* 27 a, arg. But in the case here cited, it is used as two words, *personable*. "There is a maxim that when a remainder is appointed to one, he to whom it is appointed ought at that time to be a *personable*, and to have capacity to take the remainder, or else it shall be void." *Id.*

*PERSONAL.* [Lat. *personalis*, from *persona*, q. v.] Of the person; belonging to, or following the person; as a *personal* chattel, (q. v.)

Relating to, or affecting the person; against the person; as a *personal* action, (q. v.)

**PERSONAL ACTION.** [Lat. *actio personalis*.] In practice. An action against the person, (*actio in personam*;) an action founded on personal obligation. An action by which a person claims a debt, or *personal* duty, or damages in lieu thereof, or by which a person claims a satisfaction in damages for some injury done to his *person* or property.\* 3 *Bl. Com.* 117.

**PERSONAL ASSETS.** Personal property in the hands of an executor or administrator, chargeable with the debts or legacies of the testator or intestate, and applicable to that purpose.\* 2 *Williams on Exec.* 1408. See *Assets*.

**PERSONAL CHATTELS.** Things moveable which may be annexed to, or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 *Bl. Com.* 387.

**PERSONAL CONTRACT.** A contract respecting personal property, as a lease of a stock of cattle, or other goods, for years, rendering rent; as distinguished from a lease for years, which is a real contract. 3 *Co.* 22 a, *Walker's case*.

**PERSONAL ESTATE.** Personal property, (q. v.) "Personal estates," in a will, may pass real property. 11 *East*, 246.

**PERSONAL LIBERTY.** The right or power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. 1 *Bl. Com.* 134.

**PERSONAL PROPERTY.** That kind of property which usually consists of things temporary and moveable, but includes all subjects of property not of a freehold nature, nor descendible to the heirs at law. 2 *Kent's Com.* 340. See definitions of this term in 1 *N. Y. Rev. St.* [388,] 379, § 3. 2 *Id.* [702, § 33,] 587, § 34.

"PERSONAL REPRESENTATIVES" has sometimes been construed to mean, "administrators or executors," and sometimes to mean the "next of kin." 2 *Story's Eq. Jur.* § 1065 b, and note. See 2 *Williams on Exec.* 966. The term "legal representatives" is, in its ordinary sense, synonymous with "executors or administrators." *Id. ibid.*

**PERSONAL RIGHTS.** See *Rights of persons*.

**PERSONAL SECURITY.** A person's legal and uninterrupted enjoyment of his

life, his limbs, his body, his health, and his reputation. 1 *Bl. Com.* 129.

**PERSONAL STATUTES.** In English law. Statutes which respect personal transitory contracts, as common loans or insurances. So defined by Lord Mansfield, who distinguishes between local and personal statutes. 2 *W. Bl.* 234, 246.

In foreign and modern civil law. Those statutes (laws) which have principally for their object the *person*, and treat only of property incidentally. *Story's Conf. of Laws*, § 13.—A personal statute, in this sense of the term, is a law, ordinance, regulation or custom, the disposition of which affects the person, and clothes him with a capacity or incapacity, which he does not change with every change of abode; but which, upon principles of justice and policy, he is assumed to carry with him wherever he goes. 2 *Kent's Com.* 456. Chancellor Kent considers this application of the word *statute* a perversion, and protests against its introduction into American jurisprudence. *Id.* note.

**PERSONAL THINGS,** in the old books, include personal rights and duties. **Personal things cannot be done by another.** *Finch's Law*, b. 1, ch. 3, num. 14. Suit of court could not be done by another. *Id. ibid.* A man cannot excuse himself of a contempt by attorney, but in proper person. *Id. ibid.*

**Personal things cannot be granted over,** as matters of pleasure, ease, trust and authority. *Id. ibid.* num. 15. A license to hunt in my park, to go to church over my ground, to come into my house, to eat and drink with me, cannot be granted over. *Id. ibid.* A. licenseth B. to do an act; B. cannot grant this license to another. *Id. ibid.*

**Personal things die with the person.** *Id. ibid.* num. 16. When a corporal hurt or damage is done to a man, as to beat him, &c. if he or the party beaten die, the action is gone. *Id. ibid.*

**PERSONALIS ACTIO.** Lat. In the civil law. A personal action; an action against the person, (*in personam*.) *Dig.* 50. 16. 178. 2.

**PERSONALIS ACTIO.** Lat. In old English law. A personal action. A term of the civil law, employed by Bracton, and the literal translation of which has been adopted in the common law, as the title of one of the leading divisions of civil actions. *Bract.* fol. 159 b, 284 b.

**PERSONALITER.** Lat. In old Eng-

lish law. Personally; in person. *Sidebitor* personaliter *inveniat*; if the debtor be personally found. *Fleta*, lib. 2, c. 60, § 33. See *Id.* lib. 3, c. 15, § 5. *Personaliter compareat*; shall personally appear. 3 *Hov. St. Trials*, 111.

PERSONALITY. In foreign and modern civil law. That quality of a law which concerns the condition, state and capacity of persons.\* By the personality of laws, foreign jurists generally mean all laws which concern the condition, state and capacity of persons. *Story's Conf. of Laws*, § 16.

PERSONALTY. Personal property; including every thing moveable, whether animate or inanimate, when the law considers them to be the subject of property, and sometimes things *quasi* moveable, as tenant's fixtures; and whether tangible or not, such as choses in action, or things which cannot be beneficially obtained without suit; and also some descriptions of interests connected with and issuing out of realty, such as leases for years. 1 *Chitt. Gen. Pr.* 4. Personalty is principally distinguished from realty by its actual or supposed *mobility*, and the want of that *durability* which accompanies all real property, and all permanent rights issuing out of it. *Id.* 84.

An abstract of *personal*. In old practice, an action was said to be in the *personality* where it was brought against the right person, or the person against whom in law it lay. *O. N. B.* 92. *Cowell*.

PERSONATION. [Lat. *personatio*, from *persona*, a person.] The acting as a person, or for a person; the representation of a person; an acting in the character of another. See *False personation*.

PERONE. L. Fr. A parson. *En mesme la manere est de persone de un esglise*; in the same manner is it with the parson of a church. *Britt.* c. 48.

PERSONERO. Span. In Spanish law. An attorney. So called, because he represents the *person* of another, either in or out of court. *Las Partidas*, part 3, tit. 5, l. 1.

PERSONNE. Fr. A person. This term is declared by the civil code of Louisiana to be applicable to men and women, or to either. Art. 3522, num. 25.

*Perspicua vera non sunt probanda*. Plain truths are not to be proved. *Co. Litt.* 16 b. Quoted by Lord Coke as the reason why Littleton never cited authority, except where the case was rare or doubtful.

PERTE. L. Fr. Part. *Jugement de perte pur perte*; judgment of part for part, (member for member.) *Britt.* c. 25.

PERTICA. L. Lat. In old records. A perch; a measure of land. *Spelman*.

PERTICATA, *Particata*. L. Lat. [from *pertica*.] In old Scotch law. A perch. *Skene de Verb. Signif.*

PERTINENS. Lat. [from *pertinere*, to belong.] In old English law. Pertaining; belonging; appurtenant; appendant. 4 *Co.* 38 a, *Tyrringham's case*.

Used in the laws of Canute, in the sense of a relative, (*cognatus*.) *Spelman*.

PERTINENTIAE. L. Lat. [from *pertinere*, to belong.] In old English law. Appurtenances, or, as anciently written, *appertinances*; in Scotch law, *pertinents*; things belonging, or incident to another (principal) thing. *Reg. Orig.* 1. *Fleta*, lib. 3, c. 14, § 11. Appurtenances had sometimes their own appurtenances, called *pertinentiae pertinentiarum*. Thus, to the right of feeding and pasture, themselves appurtenant to a tenement, were appurtenant the right of way, and free ingress and egress; (*habent hujusmodi pertinentiae suas pertinentias, sicut ad jus pascendi et ad pasturam pertinet via et liber ingressus et egressus*.) *Bract.* fol. 232. See *Fleta*, lib. 4, c. 18, § 3.

PERTINENTS. In Scotch law. Appurtenances. "Parts and pertinents," "parts, pendicles and pertinents," are formal words in old deeds and charters. 1 *Forbes' Inst.* part 2, p. 112, 118. *Bell's Dict.* *Cum omnibus partibus, pendiculis, aliisque pertinentiis*; with all the parts, pendicles and other pertinents. 36 *Eng. Law & Eq. R.* 20.

PERTURBATION. In ecclesiastical law. Disturbance; the disturbance of pews or seats in a church. 1 *Phillim. R.* 323.

PERTURBIA. L. Lat. In old Scotch law. Disturbance; Scotticé, *distroublance*. 1 *Pitc. Crim. Trials*, part 2, p. 72. Called also *perturbacio*.

PERVISE, *Parvise*. [L. Lat. *pervisus*, *parvisia*.] A church porch; the outer court of a palace; the palace yard at Westminster. A place where clients and their counsel used to meet for the purpose of consultation. *Fortescue de L. L. Angliæ* c. 51. *Spelman*. Dugdale, speaking of the "Pervyse of Pawles," observes that "formerly each lawyer and serjeant, at his pillar in St. Paul's Church, heard his cli-

ent's cause, and took notes thereof upon his knee. *Dugd. Orig. Jur.* 195 b.

According to Selden, *pervise* signified an afternoon's exercise or moot for the instruction of young students. *Note to Fortescue, ub. sup.*

PESCHER. L. Fr. [from Lat. *piscare*.] To fish. *Droit de pescher*; right to fish. *Britt.* c. 63.

PESCHERIE, *Peskerye*. L. Fr. [from *pescher*, q. v.] In old English law. Fishery; a fishery. *Britt.* c. 63. *Kelham*.

PESQUISIDOR. Span. In Spanish law. Coroner. *White's New Recop.* b. 1, tit. 1, § 3.

PESSON. L. Fr. In old English law. *Mast.* *Britt.* c. 21, 24, 72. See *Pessona*.

PESSONA. L. Lat. In old English law. *Mast*, including acorns, nuts and other similar produce of trees. *Bract.* fol. 222 b.

PESSONS. L. Fr. Fish. *Yearb.* M. 4 Edw. III. 38.

PESTER. L. Fr. To feed. *Yearb.* M. 4 Edw. III. 63.

PESTOUR, *Pesture*. L. Fr. [L. Lat. *pistor*.] A baker. *Kelham.* *Britt.* c. 30.

PETENS. Lat. [from *petere*, to demand.] In old English law. A demandant; the actor in a real action. *Bract.* fol. 106 b, 102. *Fleta*, lib. 6, c. 6, § 1.

PETERE. Lat. In the civil law. To ask or request; to pray. A word applied to the creation of trusts by will. See *Peto*.

To demand. A word particularly applied to proceedings to recover a *thing*, (*res*.) Hence its use in the old English real actions. See *Petens*, *Petitio*.

PETIT. Lat. [from *petere*, to ask or demand.] In old practice. Prays; demands. *A. petit versus B. tantam terram*; A. demands against B. so much land. *Bract.* fol. 281 b. *Petit auditum*; prays over. 2 *Ld. Raym.* 1540.

PETIT JUDICIUM. Lat. In old practice. Prays judgment. 6 *Mod.* 236. 10 *Id.* 210, 211.

PETIT, *Petyt*, *Petite*. L. Fr. Small; little; petty. *Petitement*; easily. *Kelham*.

PETITE ASSISE. L. Fr. The small assise; a recognizance of twelve jurors as to the right of a plaintiff upon the possession, (*reconisaunce de xii jorours del droit le pleyntyfe sur la possession*.) *Britt.* c. 42. Distinguished from the *grand assise*, (q. v.)

PETIT CAPE. Fr. and Lat. In old practice. Little *cape*; a writ of *cape* which issued against a vouchee, when he had appeared and afterwards made default. *Roscoe's Real Act.* 268. But see *Fet Assaver*, § 38—41.

PETIT (or PETTY) JURY. Small jury; the ordinary jury of twelve men, as distinguished from the *grand jury*, consisting of a larger number. Called in old practice, *la petite douzein*, the little dozen, or twelve. *Yearb.* T. 4 Edw. III. 21.

PETIT (or PETTY) LARCENY. [L. Fr. *petit larcyn*.] Larceny to the value of twelve pence, or under. See *Grand larceny*. Called in *Fleta*, *minimum latrocinium*. *Fleta*, lib. 1, c. 38, § 10.

PETIT (or PETTY) SERJEANTY. [L. Lat. *parva serjeantia*, *parva serjanteria*, *parva serjanteria*.] In English law. A species of tenure in socage, consisting in holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow or the like. *Litt.* sect. 159. 2 *Bl. Com.* 82. Distinguished from *grand serjeanty*, (q. v.) The tenure by which the lands and property granted to the Duke of Marlborough and the Duke of Wellington, for their great military services, are holden at this day, is of this kind; each rendering a small flag or ensign annually, which is deposited in Windsor castle. 1 *Chitt. Gen. Pr.* 229, note. See *Parva serjeantia*.

PETIT TREASON. [L. Lat. *parva prodition*.] In English law. The offence of killing a master, or husband. 4 *Bl. Com.* 203. Now abolished by statute 9 Geo. IV. c. 31, s. 2. 4 *Steph. Com.* 124, 184, note.

PETITIO. Lat. [from *petere*, to ask or demand.] In the civil law. The plaintiff's or actor's statement of his cause of action, in an action *in rem*. *Dig.* 44. 7. 28. *Calv. Lex*.

In old English law. Petition or demand; the count in a real action; the form of words in which a title to land was stated by the demandant, and which commenced with the word *peto*, (q. v.) 1 *Reeves' Hist.* 176. Obviously borrowed from the civil law. See *infra*.

PETITION. In practice. An application to a court in writing; in contradistinction to a motion, which may be *viva voce*. Shaw, C. J. 4 *Metcalf's R.* 376. A motion stated in writing.

In equity practice. An application in writing for an order of the court, stating the circumstances upon which it is founded; a proceeding resorted to whenever the nature of the application to the court requires a fuller statement than can be conveniently made in a notice of motion. 1 *Barbour's Chanc. Pr.* 578. See 3 *Daniell's Chanc. Pr.* 1801, (Perkins' ed.)

**PETITION DE DROIT.** L. Fr. In English practice. A petition of right; a form of proceeding to obtain restitution from the crown of either real or personal property, being of use where the crown is in possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the crown, grounded on facts disclosed in the petition itself. 3 *Bl. Com.* 256. See a late case of this kind, 8 *Ad. & Ell. (N. S.)* 208.

**PETITION OF RIGHT.** A parliamentary declaration of the liberties of the people, assented to by King Charles I. in the beginning of his reign. 1 *Bl. Com.* 128. See it at large, 3 *How. St. Trials*, 221, *et seq.*

**PETITOR.** Lat. [from *petere*, to demand.] In Roman law. A plaintiff or actor, particularly in an action *in rem*; a demandant. *Calv. Lex.* Actor est qui agit in personam, petitor, qui agit in rem; an actor is one who prosecutes against a person, a demandant one who prosecutes against a thing. *Cujac. Observ.* lib. 7, c. 26.

**PETITORY.** [Lat. *petitorius*, from *petere*, to demand.] Having the quality of a demand or petition; resting in demand; claiming title merely, without possession. See *Petitory suit*.

**PETITORY SUIT or ACTION.** In admiralty law. A suit in which the mere title to property is litigated and sought to be enforced, as distinguished from a *possessory* suit, (q. v.) 5 *Mason's R.* 465. 1 *Kent's Com.* 371.

In Scotch law. An action wherein the pursuer (plaintiff) claims something as due or belonging to him by the defender, (defendant.) 1 *Forbes' Inst.* part 4, p. 163. *Bell's Dict.*

**PETO.** Lat. In the Roman law. I request. A common word by which a *fidei-commisum*, or trust, was created in a will. *Inst.* 2. 24. 3.

In old English law. I demand. The word with which a demandant's count commenced, it being in the first person.

*Glanv.* lib. 2, c. 3. *Peto versus talem tantum terræ cum pertinentiis, in tali villa, ut dotem meam*; I demand against such a one, so much land, with the appurtenances, in such a town, as my dower. *Bract.* fol. 313 b. *Fleta*, lib. 5, c. 32, § 3. *Id.* lib. 6, c. 52.

**PETRA.** Lat. In old English law. Stone. *Fleta*, lib. 1, c. 20, § 114.

A stone. A weight of twelve pounds and a half. *Fleta*, lib. 2, c. 12, § 1.

**PETTY.** Small; inferior. A word framed from the Fr. *petit*, and sometimes used indiscriminately with it. See *Petit*.

**PETTY AVERAGE.** In maritime law. A term used to denote such charges and disbursements as, according to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage; such as the hire of a pilot for conducting a vessel from one place to another, (formerly called *lodemanage*,) towage, light money, beaconage, anchorage, bridge toll, quarantine and such like. *Park on Ins.* 100. The particulars belonging to this head depend, however, entirely upon usage. *Abbott on Ship.* 404.

**PETTY BAG.** [L. Lat. *parva бага*.] In English practice. A name given to one of the offices belonging to the common law court in chancery, from the *little sack* or bag anciently used for keeping the writs relating to such matters wherein the crown was immediately or mediately concerned. 3 *Bl. Com.* 49.

**PETTY CONSTABLE.** In English law. The ordinary kind of constable in town and parishes, as distinguished from the high constable of the hundred. See *Constable*. The distinction is expressed in American law by the same words.

**PETTY LARCENY.** See *Petit larceny*.

**PEYNE.** O. Eng. and L. Fr. Pain; penalty. 3 *Leon.* 8.

**PEYS.** L. Fr. In old English law. Weight; weights. *Britt.* c. 30. *Peyser*, *peiser*; to weigh. *Id. ibid.*

**PHAROS.** Lat. In maritime law. A light-house. *Locen. de Jur. Mar.* lib. 2, c. 1, sec. 7.

**PHYSICAL FACT.** In the law of evidence. A fact, the existence of which may be perceived by the senses; such as the sound of a pistol-shot; a man running; impressions of human feet on the ground. *Burr. Circ. Evid.* 130. See a particular

enumeration of these. *Id.* 253. Defined by Mr. Bentham, "a fact considered to have its seat in some inanimate being, or, if in an animate being, by virtue, not of the qualities by which it is constituted animate, but of those which it has in common with the class of inanimate beings." 1 *Benth. Jud. Evid.* 45.

**PICCAGE.** [L. Lat. *piccagium*, from Fr. *piequer*, to perforate, or pick.] In old English law. Money paid at fairs for leave to break the ground, to set up booths or stalls. *Cowell. Spelman.*

**PICKERY.** Sc. [O. Sc. *pykerie*.] In Scotch law. Petty theft. *Bell's Dict.* 2 *Pitc. Crim. Trials*, 43.

**PIE, Pee, Pe.** L. Fr. [from Lat. *pes*, a foot.] A foot. *Piez, pez*; feet. *Kelham.*

**PIED POUDRE.** L. Fr. [L. Lat. *pede pulverosus*.] In old English law. Dusty-foot. A term applied to itinerant merchants, chapmen or pedlars, who attended fairs. *Cowell. Skene de Verb. Signif. voc. Pedepulverosus.* Usually written as one word, *piepoudre*. 4 *Taunt.* 533.

**PIER, Piere.** L. Fr. [from Lat. *pater*.] In old English law. Father; a father. *Britt. c.* 109.

**PIGTEL.** [L. Lat. *pictellum*.] In old conveyancing. A small parcel of land enclosed with a hedge; a little close. *Cowell.* Derived by Cowell from Ital. *piccolo*, little, but by Spelman from L. Lat. *pictatium*, a scrap.

**PIGNERARE.** Lat. [from *pignus*, a pledge.] In the civil law. To pledge; to deposit on pledge, (*pignori ponere*.) *Calv. Lex.*

**PIGNORATIO.** Lat. [from *pignorare*, q. v.] In modern civil law. The taking of cattle doing damage, by way of pledge, till satisfaction is made. *Heinecc. Elem. Jur. Civ. lib.* 4, tit. 10, § 1242. Corresponding with the *distress* and *impounding* of the common law.

**PIGNORATITIA ACTIO.** Lat. In the civil law. An action of pledge, or founded on a pledge, which was either *directa*, for the debtor, after payment of the debt, or *contraria*, for the creditor. *Heinecc. Elem. Jur. Civ. lib.* 3, tit. 13, §§ 824—826. *Dig.* 13. 7. Written *pignoratitia*, *ibid.*

**PIGNUS.** Lat. In the civil law. A pledge or pawn; a delivery of a thing to a creditor, as security for a debt.

A thing delivered to a creditor as security for a debt. This is the sense in which

the word is employed in the Institutes. *Pignoris appellatione eam proprie rem contineri dicimus, quæ simul etiam traditur creditori, maxime si mobilis sit*; under the title of *pignus* (pledge,) we declare, is properly included *the thing itself*, which at the same time is delivered to the creditor, especially if it be movable. *Inst.* 4. 6. 7. It was thus distinguished from a *hypotheca*, which was valid without delivery. *Id. ibid.* And see *Dig.* 13. 7. 9. 2. *Story, J. 1 Sumner's R.* 73, 81. But a *pignus* might also be good without delivery. *Dig.* 13. 7. 1.

In an exact sense, *pignus* was properly applied to moveables, and *hypotheca* to immovables. 2 *Story's Eq. Jur.* § 1006. But the word was sometimes taken in a more general sense. *Id. ibid. Story on Bailm.* § 290 a. See *Dig.* lib. 20, *per tot.* Gaius, in the Digests, derives *pignus* from *pugnus*, the fist or hand, because things which are given in pledge are delivered into the hand. *Dig.* 50. 16. 238. 2.

**PILLORY.** [L. Fr. *pillorie*; L. Lat. *pillorium*, *pilloria*; *collistrigium*.] In criminal law. An engine of wood made to punish offenders, intended, as Spelman observes, more for the infliction of disgrace than pain, (*ad ludibrium magis quam pœnam*;) the head and face of the offender being exposed to public view, through an opening which fitted the neck in such a manner that it could not be drawn back, the hands also being secured through similar openings; very significantly described by its old Saxon name *healsfang*, (neck-grasp,) of which the Lat. *collistrigium* is an imitation. For a particular description of the manner in which this punishment was inflicted, see the case of *Rex v. Beardmore*, 2 *Burr.* 792.

Cowell inclines to derive *pillory* from the Gr. *πύλη*, a gate, and *όράω*, to see. Spelman prefers the Fr. *pilleur*, a cheat, as denoting the class of offenders on whom the punishment was at first principally inflicted. Both, however, leave it uncertain.

**PILOT.** In maritime law. A steersman; a person particularly acquainted with the navigation of certain waters, and employed to steer vessels through them.\* —A person taken on board a vessel at a particular place, for the purpose of conducting her through a river, road or channel, or from or into a port. *Abbott on Ship.* 195. *Story, J. 10 Peters' R.* 108, 123.—A person qualified and appointed

by proper authority, to conduct vessels in and out of particular harbors, or along certain coasts, at a certain fixed rate, depending on the draught of water. *Brande*. It is the duty of the master engaged in a foreign trade, to put his ship under the charge of a pilot, both on his outward and homeward voyage, when he is within the usual limits of the pilot's employment. 3 *Kent's Com.* 175, 176, and note. The pilot, while on board, has the exclusive control of the ship. He is considered as master *pro hac vice*. *Id. ibid.*

**PILOTAGE.** The navigation of a vessel by a pilot; the duty of a pilot. *Story*, J. 10 *Peters' R.* 121, 123.

The charge or compensation allowed for piloting a vessel. *Abbott on Ship.* 198, 199.

**PIN MONEY.** Money allowed to, or settled upon a wife, for the purpose of supplying her with dress and the means of defraying her other personal expenses. See *Sugden's Law of Property*, 162, 170, and note.

**PINCERNA.** Lat. In old English law. Butler; the king's butler, whose office it was to select out of the cargo of every vessel laden with wine, one cask at the prow and another at the stern, for the king's use. *Fleta*, lib. 2, c. 22.

**PIPE ROLL.** A great roll kept in the English Exchequer, said to be so called from its resemblance in shape to a pipe. *Spelman*. But, according to Lord Bacon, it was so called "because the whole receipt is finally conveyed into it by the means of divers small pipes or quills, as it were water into a great head or cistern." *Bacon's Works*, iv. 133. Called by Madox "the most stately record of the exchequer, and the great medium of charge and discharge of rents, farms and debts due to the crown." *Hist. Exch.* vol. ii. p. 114. There are other rolls under this name. See *Hubback's Evid. of Succession*, 624—626.

**PIPOWDER, Piepoudre.** [Fr. *piepoudre*, q. v.] In English law. The name of a court held for fairs and markets. See *Court of piepoudre*. Pipowder courts were formerly appointed to be held at fairs in the town and borough of Westchester, New-York. *Bolton's Hist. of Westchester*, i. 194.

**PIRACY.** In public criminal law. Robbery or forcible depredation on the high seas, without lawful authority, and

done *animo furandi*, in the spirit and intention of universal hostility. 1 *Kent's Com.* 183. It is the same offence at sea with robbery on land. *Id. ibid.* See *Whart. Am. Crim. Law*, §§ 2816—2855.

**PIRATE.** Eng. and Fr. [Lat. *pirata*, from Gr. *πειραειν*, to cross or roam over.] A sea robber;\* one who maintains himself by pillage and robbing at sea. *Cowell*.—A robber on the high seas. *Webster*.—A rover, according to the seeming radical sense of the word. "A pirate is a rover and a robber upon the sea." 3 *Inst.* 113. *Pirata est hostis humani generis*; a pirate is an enemy of the human race. *Id. ibid.* And see *Santerna*, part 4, n. 50. *Straccha de Nautis*, part 3, n. 30.—One who, without a commission from any sovereign, of his own authority, roams over the sea, for the sake of plunder. *Casaregis*, disc. 64, n. 4. And see *Emerig. Tr. des Ass.* ch. 12, sect. 28.

In old Saxon law, this word occurs in the sense of a sea-soldier or marine. *Spelman*. *Cowell*.

**PIRUS.** Lat. In old English law. A pear tree. *Fleta*, lib. 2, c. 82, § 2.

**PISCARIA.** L. Lat. [from *piscis*, fish.] In old English law. Fishery; a fishery. *Reg. Orig.* 156. Sometimes translated *piscary*, (q. v.)

**PISCARY.** [L. Lat. *piscaria*; L. Fr. *pescherie*.] Fishery. 2 *Bl. Com.* 34, 35.

**PISCINA.** Lat. [from *piscis*, fish.] In old English law. A fish-pond. *Fleta*, lib. 4, c. 27, § 8.

**PISCIS.** Lat. Fish. Called *nomen collectivum*, as being used to denote both the singular and plural. 5 *Co.* 35 a, *Playter's case*.

**ΠΙΣΤΙΚΟΣ, Πιστικός.** Gr. [from *πίστις*, faith.] In maritime law. The master of a ship; he to whom the government of a ship was entrusted. *Laws of Oleron*, art. 1, obs. 1 *Peters' Adm. Dec.* Appendix, vi. *Calv. Lex*.

**PISTOR.** Lat. In old English law. A baker; the baker. *Fleta*, lib. 2, c. 83. See his duties described, *ibid.*

**PIT AND GALLOWS.** [L. Lat. *fossa et furca*.] In old Scotch law. The right to punish thieves by drowning and hanging. 2 *Pitc. Crim. Trials*, 43.

**PIX.** Lat. A mode of testing coin. The ascertaining whether coin is of the proper standard is, in England, called *pixing* it; and there are occasions on which resort is had for this purpose to an ancient

mode of inquisition called the *trial of the pix*, before a jury of members of the Goldsmith's Company. 2 *Steph. Com.* 540, note.

PIXIS. L. Lat. In old pleading. A box. *Cro. Jac.* 664. "Trover was brought *de una pixide*, Anglicè, a box full of bands," &c. *Id. ibid.* A box for deeds and muniments. *Latch*, 195.

PLACE. An old word for *pleas*. Thus the court of *Common Pleas* is sometimes called the court of *Common Place*. *Stat. 4 Hen. VII. c. 24.* "Common banke" is translated "Common Place." *Litt.* sect. 94. The expression "Clerk of the Place" occurs frequently in the Year Books. P. 2 Hen. VI. 3. M. 3 Hen. VI. 24. H. 3 Hen. VI. 2. II. 4 Hen. VI. 6. T. 7 Hen. VI. 2. H. 8 Hen. VI. 21. See *Common Place*.

PLACE WHERE. A phrase used in the older reports, being a literal translation of *locus in quo*, (q. v.) "Who was seized of the *place where* in fee." 6 *Mod.* 158. "The plaintiff's cattle escaped into the *place where*." *Id.* 198. See 1 *Leon.* 60, *et passim*.

PLACEA. L. Lat. In old records. A place. *Coram uno justitiario placeæ ubi placitum motum*; before one justice of the place where the plea was moved, (suit commenced.) *Reg. Orig.* 186. *Reg. Jud.* 84 b. This word had not always the sense of *locus*, but rather that of a plot or piece of ground. *Provideatur ei in loco competenti, quædam placea quæ ei sufficere possit ad mesuagium*; there shall be provided for her, in a suitable place, a certain piece (of ground) which may suffice her for a messuage. *Fleta*, lib. 5, c. 24, § 13. See *Platea*.

PLACETA. L. Lat. In old records. A place, as applied to a house. *Placeta messuagii.* *Cowell*.

A piece or parcel, as applied to lands. *Placeta pasturæ.* *Id.* So the Fr. *place de terre*; a piece of land. *Kelham*.

PLACITA. Lat. [plur. of *placitum*, from *placere*, to please.] In the civil law. The decrees or constitutions of the emperor; being the expressions of his will and pleasure, (*quod principi placuit*.) *Calv. Lex. Brissonius*.

PLACITA. L. Lat. [plur. of *placitum*, q. v.] In old English law. Pleas; pleadings; judicial proceedings; suits; debates and trials at law. *Lites et placita*; suits and pleas. *Bract.* fol. 1 b. *Placita coro-*

*næ*; pleas of the crown, or criminal suits. *Id.* fol. 116 b. *Co. Litt.* 284 b. *Placita communia*; common pleas. *Id. ibid.*

Penalties; fines; mulcts or emendations in the exchequer. *Lib. Nig. Scacc.* lib. 2, tit. 13.

In practice. The caption or title of a judgment record; so called from its initial word when in Latin, *Placita*; (Pleas, i. e. pleadings;) containing the style and term of the court; and which in modern records usually runs thus: "PLEAS before the [justices of the court in which the action is, giving their proper title,] at the [place where the court is held,] of [a certain term or day in term designated,] in the year [specified.] Witness—Justice,—clerk." There were formerly two of these *placita* in the English *nisi prius* records.

PLACITA. L. Lat. [O. Fr. *plaids*.] In old European law. Public courts or assemblies, in which the sovereign presided. See *Placitum*.

PLACITA COMMUNIA. L. Lat. In old English law. Common pleas or suits; civil actions between subject and subject. *Co. Litt.* 284 b. See *Communia placita*, *Placitum commune*.

PLACITA CORONÆ. L. Lat. In old English law. Pleas of the crown. *Bract.* fol. 116 b. Criminal pleas, proceedings or prosecutions, (*placita criminalia*.) *Co. Litt.* 284 b. A title given to some of the ancient works on criminal law.

PLACITA JURIS. L. Lat. Pleas, or determinations, (that is, arbitrary rules) of law. A term used by Lord Bacon, to denote such rules of law as do not belong to the class of maxims or conclusions of reason, and which he describes as "particular and positive learnings of laws," "grounds and positive learnings received with the law and set down." *Bacon's Max.* pref. *Id.* 55, reg. 12.

*Receditur a placitis juris, potius quam injuriæ et delicta maneant impunita.* Positive rules of law will be dispensed with, rather than crimes and wrongs should remain unpunished. *Bacon's Max.* 55, reg. 12. Lord Bacon gives the following, among other illustrations of this maxim: "It is a positive ground [of law, or *placitum juris*] that the accessory in felony cannot be proceeded against until the principal be tried; yet if a man, upon subtilty and malice, set a madman by some

device to kill him, [another?] and he doth so, now forasmuch as the madman is excused, because he can have no will or malice, the law accounteth the incitor as principal, though he be absent, rather than the crime shall go unpunished." *Id.* 57.

**PLACITABILE.** L. Lat. In old English law. Pleadable. *Spelman.*

**PLACITAMENTUM.** L. Lat. In old records. The pleading of a cause. *Spelman.*

**PLACITARE.** L. Lat. [from *placitum*, q. v.] In old English law. To plead; to state to a court in form of law. *Placitan-tur placita*; pleas are pleaded. *Bract.* fol. 106. *Placitavit*; (he) pleaded. *Yearb.* M. 1 Edw. II.

To litigate; to make the subject of a plea or action; to implead or prosecute. *Breve Gul. Cong. apud Hale's Hist. Com. Law.* 120.

**PLACITATOR.** L. Lat. [from *placitare*, q. v.] In old records. A pleader. *Cowell.* *Spelman.*

**PLACITUM.** Lat. [from *placere*, to please.] In the civil law. An agreement of parties, (*conventio*;) that which is their pleasure to arrange between them. *Calv. Lex.*

An imperial ordinance or constitution; literally, the prince's pleasure. *Quod principi placuit legis habet vigorem*; what has pleased the prince has the force of law. *Inst.* 1. 2. 6.

A judicial decision; the judgment, decree or sentence of a court. *Calv. Lex. Brissonius.*

**PLACITUM.** L. Lat. [O. Fr. *plait*, *pluid*.] In feudal and old European law. An assembly of the king and great men of the realm. *Houard, Anc. Loix des Franc.* sect. 10. *Steph. Pl.* Appendix, Note (1.)

The general or national assembly of the Franks. *Hincmar. Op.* vol. ii. c. 29, 211. 1 *Rob. Charles V.* Appendix, note xxxviii.

An assembly or court of freeholders or vassals. *Crabb's Hist.* 58. Supposed to be derived from the Germ. *plats*, a field, or open place, being sometimes held in the open country.

An ordinary court of justice. *Calv. Lex.*

**PLACITUM.** L. Lat. In old English law. A court. *Comitatuum placita*; county courts. *Crabb's Hist.* 58.

A cause or suit in court. *Lites et placita*; suits and pleas. *Bract.* fol. 1 b. *Actionum sive placitorum*; of actions or

pleas. *Id.* fol. 101 b. *Placitum de recto*; an action or writ of right. *Id.* fol. 328. *Quod placitum inchoatum fuit primum in curia P.*; which suit was first commenced in the court of P. *Reg. Orig.* 18 b. *Placitum principale et incidens*; a principal and a collateral suit. *Bract.* fol. 392. *Tenere placitum*; to hold plea; to take cognizance of a cause. *Reg. Orig.* 34. *Trahere in placitum*; to draw into plea; to bring into court; to involve in a suit. *Id. ibid.* *Placitum de debito*; a plea of debt. *Fleta*, lib. 2, c. 60, § 27. *In placito debiti*; in a plea of debt. 1 *Str.* 407. *Placitum pendens*; a plea pending. *Fleta*, lib. 2, c. 61, § 12. *In placito detentionis*; in a plea of detainue. *Keilw.* 119.

A day in court. *Placitum nominatum*; a day appointed for the defendant to plead or answer. *Crabb's Hist.* 59. *Placitum fractum*; a day broken, or lost to the defendant. *Id. ibid.*

A mulct or fine imposed in court. *Id. ibid.*

A proceeding in court, particularly a pleading. *Placita*; (q. v.) pleas or pleadings. This use of the word has been retained in records down to the present time.

A plea; an allegation of fact opposed by a defendant to the plaintiff's declaration. See *Plea*.

**PLACITUM COMMUNE.** L. Lat. In old English law. A common plea or action. *Cum placitum debiti sit quoddam placitum commune, et in charta libertatis contineatur quod communia placita non sequantur cur' Reg' sed in certo loco teneantur*; since a plea of debt is a kind of common plea, and in the Charter of Liberty, (Magna Charta,) it is contained that common pleas shall not follow the king's court, but shall be held in a certain place. *Fleta*, lib. 2, c. 61, § 18.

**PLAGA.** Lat. [L. Fr. *playe*.] In old English law. A wound. *Fecit ei insultum et quandam plagam ei fecit in tali loco*; made an assault upon him, and gave him a certain wound in such a place. *Bract.* fol. 144. Properly, a wound made by a cutting instrument, (an incised wound.) *Fleta*, lib. 1, c. 41, § 3. *Plaga* and *vulnus*, (wound,) were synonymous, though *plaga* was the more usual word in indictments. 5 Co. 121 b, *Long's case*.

**PLAGARE.** L. Lat. In old European law. To wound. *L. Salic.* tit. 16, § 2. *Spelman.*

**PLAGIARIUS.** Lat. In the civil law. A man-stealer; a kidnapper. *Dig.* 48. 15. 1. 4 *Bl. Com.* 219.

**PLAGIUM.** Lat. In the civil law. Man-stealing; kidnapping. The offence of enticing away and stealing men, children and slaves. *Calv. Lex.* The persuading a slave to escape from his master, or the concealing or harboring him without the knowledge of his master. *Dig.* 48. 15. 6. A term used in Scotch law. 2 *Brown's R.* 288.

**PLAID.** O. Fr. In old European law. An assembly of the kings and great men of the realm. *Houard, Anc. Loix des Franc.* sect. 10. *Steph. Pl.* Appendix, Note (1.)

A court of justice. *Id. ibid.*

**PLAIDEUR.** O. Fr. A pleader; an advocate. See *Pleideoir*.

**PLAIE.** L. Fr. A wound. *LL. Gul. Cong.* l. 12.

**PLAINT.** [L. Fr. *pleyntc.*] In English practice. A private memorial tendered in open court to the judge, wherein the party injured sets forth his cause of action. A proceeding in inferior courts, by which an action is commenced without original writ. 3 *Bl. Com.* 373. This mode of proceeding is commonly adopted in cases of replevin. 3 *Steph. Com.* 666.

**PLAINTIFF.** [L. Fr. *pleyntyfe*, *pleintife*, from *pleindre*, to complain; L. Lat. *querens.*] In practice. The complaining party in an action at law; the party bringing an action, and so named on the record. It is the old French word, with merely the spelling modernized. See *Pleyntyfe*.

In the case of the *Bank of Salina v. Henry*, it was said by the Supreme Court of New-York that, in the legal as well as in the ordinary use of the term, no one can strictly and properly be denominated a plaintiff in an action, unless he is named as such on the record. *Bronson, J. 1 Hill's R.* 555, 557. But the decision in this case was reversed by the Court of Errors, who held that the word plaintiff extended to a party in interest as plaintiff, although not the plaintiff on the record. 5 *Hill's R.* 523—547. This was in construction of an act of the legislature, entitled "An act to prevent usury," passed May 15th, 1837.

**PLAIZ.** L. Fr. Pleas, (*placita.*) *LL. Gul. Cong.* l. 2.

**PLANTA.** Lat. In the civil and old English law. A plant. See *Plantatio*.

**PLANTATIO.** Lat. [from *plantare*,

to plant.] In the civil law. Planting; one of the modes of acquiring property by accession, (*accessio*, q. v.) *Si Titius alienam plantam in solo suo posuerit, ipsius erit; et ex diverso, si Titius suam plantam in Mævii solo posuerit, Mævii planta erit; si modo utroque casu radices egerit;* if Titius have set another man's plant in his own ground, it will be his own; and on the other hand, if Titius have set his own plant in Mævius' ground, the plant will be Mævius', provided that in either case it have taken root. *Inst.* 2. 1. 31. This passage is taken word for word (except the error of *Menii* for *Mævii*;) by Bracton, who gives no authority, but adds, *unde versus*,

*Quicquid plantatur, seritur vel inædificatur,  
Omne solo cedit, radices si tamen egit.*

(whence the verse, "whatever is planted, sown or built, all goes with the soil, provided it have taken root.") *Bract.* fol. 10. In *Fleta*, the reading of the passage is somewhat varied, but there is the same error of *Menius* for *Mævius*. *Fleta*, lib. 3, c. 2, § 13.

**PLANUS, Planum.** Lat. In the Roman law. Plain; level; not elevated. *De plano*; from or on a level, as opposed to *pro tribunali*, from a tribunal or judgment seat. The prætor or magistrate was figuratively said to hear causes (*cognoscere*) *de plano*, when he did so without the ceremony of occupying the tribunal, as while walking abroad, &c. *Calv. Lex.*

**PLATEA.** L. Lat. In old English law. A clear or open space of ground; a plat or plot of ground. *Provideatur ei in loco competenti, quædam platea quæ ei sufficere possit ad messuagium;* there shall be provided for her in a suitable place, a certain plat or space which may be sufficient for a messuage for her. *Bract.* fol. 97 b. In the corresponding passage in *Fleta*, the word is written *placea*, (q. v.)

A wide place; a court yard. 1 *Ld. Rayn.* 607, arg. A barn-yard. *Fleta*, lib. 2, c. 73, § 9.

**PLAY.** L. Fr. In old English law. A plea, or action. *Si le play soit ailleurs que en nostre court;* if the plea be elsewhere than in our court. *Britt.* c. 26. *Sicome play de dette et de covenant;* as a plea of debt and of covenant. *Id. ibid.* *Pendaunt le play.* *Id.* c. 27. *Comencement del play.* *Id.* c. 46. *Obligacion est—mere de play;* obligation is the mother of an action. *Id.* c. 28.

**PLAYE.** L. Fr. [from Lat. *plaga.*] In

old English law. A wound. *Et puis vist le coroner, et les jurors ore luy, voer le cors, et les playes et les coupes*; and then shall the coroner go, and the jurors with him, to view the body, and the wounds, and the strokes [or marks of blows.] *Britt. c. 1.*

PLE. L. Fr. In old English law. A plea or suit. *Les ples le roy*; the pleas of the crown. *Mirr. c. 4. 9 Co. pref. v.*

A plea, (pleading.) *Ceo n'est ple*; this is no plea. *Yearb. T. 18 Hen. VI. 2. Le ple est double. H. 8 Hen. VI. 13.*

PLEA. [L. Fr. *plee, ple, play*; L. Lat. *placitum*; Sax. *pleo, pleoh*, from *pleah*, loss, peril, according to Spelman.] In old English law and practice. A suit or action. This sense of the word has been preserved in modern declarations, in which the plaintiff complains of the defendant "of a plea (L. Lat. *de placito*, that is in action) of debt," or whatever the form of action may be. See *De placito*. It is preserved, also, in the phrase "to hold plea," which still occurs in the books.

An allegation made by a party in a cause; a pleading.\* *Steph. Pl. Appendix, Note (1.)* That which either party alleges for himself in court. *Cowell.* See *Plead.*

In a stricter sense. An allegation of fact in a cause, as distinguished from a demurrer. *Steph. Plead. Appendix, Note (26.)* See *Plead.*

In modern practice. An answer or allegation of fact which a defendant, in an action at law, opposes to the plaintiff's declaration. *Steph. Pl. Appendix, Note (26.)* The word has obtained this sense by a process of gradual restriction of meaning, which may also be observed in the successive definitions of *placitum*, the corresponding Latin word.

In equity practice. A special answer, showing or relying upon one or more things, as a cause why the suit should be either dismissed, or delayed, or barred. *Mitford's Chanc. Pl. 219. Story's Eq. Plead. § 649.*

PLEA IN ABATEMENT. In practice. A plea which goes to *abate* the plaintiff's action, that is, to suspend or put it off for the present. *3 Bl. Com. 301.* Called, also, a *dilatory plea*, (q. v.)

PLEA IN BAR. In practice. A plea which goes to *bar* the plaintiff's action, that is, to defeat it absolutely and entirely. *1 Burr. Pr. 162. 3 Bl. Com. 303.* Anciently termed a *bar*, (q. v.)

PLEAD. [L. Fr. *pleder*; L. Lat. *placi-*

*tare*, qq. v.] Originally and radically,—to litigate; to carry on a *plea*, (suit.) This sense appears in the L. Lat. *placitare*, and L. Fr. *pleder*, (qq. v.) and is preserved in the word *implead*, which is still used.

In a stricter sense,—to conduct that part of an action which consisted in the *allegations* of the respective parties.\* To make allegation in a cause. *Steph. Pl. Appendix, Notes (1,) (18.)* See *Pleading*. This, when the pleadings were oral, seems to have corresponded very closely with the modern popular sense of the word, (to argue at the bar, or address a jury.)

In a still stricter sense,—to make an allegation of *fact* in a cause. *Steph. Pl. Appendix, Note (26.)* It is a general rule of pleading, that a party, at each successive stage of the process, must demur or *plead* to the allegation of his adversary. *Id. 138.*

In the strictest sense,—to make that allegation of fact, on the part of a defendant, *which follows* and is opposed to the *plaintiff's declaration*.\* *Steph. Pl. Appendix, Note (26.)* In practice, the plaintiff is said to declare, the defendant to *plead*, the plaintiff to reply, &c.

PLEADER. [L. Fr. *pleador, pledor*; O. Fr. *pleideoir*; L. Lat. *placitans advocatus*.] A person professionally employed to manage another's cause for him, particularly to plead orally, or argue for him in court. The use of professional *pleaders* or advocates may be traced, among some of the continental nations, to a period extremely remote. *Steph. Pl. Appendix, Note (8.)* In the Assizes of Jerusalem, the term pleader (*pledeoir*) is used as nearly synonymous with counsel, (*conseill*.)

PLEADING. In common law practice. The process of making allegation in a cause, consisting of a series of written statements proceeding from the parties in alternate order, and so adapted to each other as to develop of themselves the essential point in controversy, or subject for the decision of the court, which is termed the *issue*.

That stage of the proceedings in an action, which commences when the defendant has *appeared*, and terminates with the production of an *issue* between the parties.

That peculiar system or science of statement established in the common law of England, consisting of a variety of rules, (with accompanying forms,) by which the allegations of the respective parties are so regulated as to produce a single, certain and material issue between the parties, and

to produce it with the least delay and confusion. *Steph. Pl.* 1. *Id.* 123—137, *et per tot.*

In equity. The formal method of placing the statements of the respective parties to a suit before the court; a less technical procedure than pleading at law, the substance of the statements being regarded rather than their precise verbal form.

PLEADINGS. [L. Lat. *placita*.] The individual allegations of the respective parties to an action at common law, proceeding from them alternately, in the order and under the distinctive names following: the plaintiff's *declaration*, the defendant's *plea*, the plaintiff's *replication*, the defendant's *rejoinder*, the plaintiff's *sur-rejoinder*, the defendant's *rebutter*, the plaintiff's *sur-rebutter*; after which they have no distinctive names.

In equity. The formal written allegations or statements of the respective parties in a suit, to maintain or defeat it; consisting of the plaintiff's bill, the defendant's answer, and the plaintiff's replication. *Story's Eq. Pl.* § 4, and note.

PLEAS OF THE CROWN. [L. Lat. *placita coronæ*.] In English law. Criminal prosecutions. So called, because conducted at the suit of the crown.\* 3 *Bl. Com.* 40.

Criminal law. The title of several standard works on criminal law, as Hale's *Pleas of the Crown*, Hawkins' *Pleas of the Crown*, and others.

PLEBEYOS. Span. [from Lat. *plebeius*, from *plebs*, q. v.] In Spanish law. Commons; those who exercise any trade, (*arte*), or who cultivate the soil. *White's New Recop.* b. 1, tit. 5, c. 3, § 6, and note.

PLEBISCITUM. Lat. In the Roman law. A law enacted by the *plebs* or commonalty, (that is, the citizens, with the exception of the patricians and senators,) at the request, or on the proposition of a plebeian magistrate, such as a tribune; (*quod plebs, plebeio magistratu interrogante, (veluti tribuno,) constituebat.*) *Inst.* 1. 2. 4. *Tayl. Civ. Law*, 197.

PLEBS. Lat. In the Roman law. The commonalty, or citizens, exclusive of the patricians and senators. *Plebis appellatione, sine patriciis et senatoribus, ceteri cives significantur.* *Inst.* 1. 2. 4. *Dig.* 50. 16. 238, pr.

PLEDABLE. L. Fr. That may be brought or conducted, as an action, or *plea*, as it was formerly called. *Britt.* c. 32. See *Pleder*.

PLEDER. L. Fr. In old English law. To plead; to conduct an action. *La forme et la manere de pleder parsonels plees pledables par attachments de cors*; the form and the manner of pleading personal pleas pleadable by attachments of the body. That is, the manner of conducting personal actions which may be brought by attachment. *Britt.* c. 32.

To plead; to put in a plea. *Pleder en abatement.* *Yearb.* M. 9 Edw. III. 57. *Pleda en barre.* M. 10 Edw. III. 41.

PLEDGE. [L. Fr. *plegge, plege*; L. Lat. *plegius*.] In old English law and practice. A surety; a person who undertook or became responsible for another. A term always applied to persons. See *Plegius*.

PLEDGE. [Lat. *pignus*.] In the law of bailment. A bailment of goods to a creditor, as security for some debt or engagement. *Story on Bailm.* § 7.—A bailment or delivery of goods by a debtor to his creditor, to be kept till the debt be discharged. 2 *Kent's Com.* 577. Distinguished from a mortgage of goods, by its passing only a special property to the pledgee, and by its requiring actual possession by him to create or to support his title. *Story on Bailm.* § 287.

PLEDGER. The party delivering goods in pledge; the party pledging. *Story on Bailm.* § 287.

PLEDGEE. The party to whom goods are pledged, or delivered in pledge. *Story on Bailm.* § 287.

PLEE. L. Fr. In old English law. An action or suit; a *plea*, in the ancient sense of the word. *Parsonels plees pledables par attachments*; personal actions which may be prosecuted by attachments. *Britt.* c. 32. *En plees realx, et auxi en plees personals*; in real actions, and also in personal actions. *Litt.* sect. 464.

A plea, in the modern sense. *Plee en barre*; a plea in bar. *Litt.* sect. 492.

PLEGGAGE. L. Fr. Suretyship. *Kelham.* See *Plegiagium*.

PLEGGGE. L. Fr. A pledge. *Plegges de suc*; pledges to prosecute. *Britt.* c. 1. *Gage et plegge.* *Id.* c. 27.

PLEGIABILIS. L. Lat. In old English law. That may be pledged; the subject of pledge or security. *Fleta*, lib. 1, c. 20, § 98.

PLEGIAGIUM. L. Lat. In old English law. Suretyship. *Fleta*, lib. 2, c. 72, § 15.

PLEGIUS, *Pleggius*. L. Lat. In old

English practice. A pledge; a surety. *Mag. Cart.* 9 Hen. III. c. 8. *Pone per radium et salvos plegios*; put by gage and safe pledges. *Bract.* fol. 149 b. See *Id.* 336. *Per plegios dimittere*; to release on pledges or bail. *Fleta*, lib. 2, c. 52, § 40, *et seq.* *Plegii de proseguendo*; pledges to prosecute. *Id.* lib. 2, c. 62, § 2.

PLEGIARE. L. Lat. In old practice. To pledge; to undertake; to become responsible for. *Si nihil aliud plegiaverint nisi tantum habendi eum*; if they have undertaken nothing more than merely to have him. *Bract.* fol. 149 b. *Quod plegiatum non habuerint, sicut eum plegiaverunt*; that they had not the party pledged, as they pledged him. *Fleta*, lib. 2, c. 65, § 15.

PLEIDEOIR. O. Fr. In old European law. A pleader; an advocate. *Il doit demander au seigneur, à conseil, le meilleur pleideoir de la court*; he ought to ask of the lord, for his counsel, the best pleader in the court. *Assizes de Jerus.* c. ix.

PLEINE AGE. L. Fr. In old English law. Full age. *Litt.* sect. 103.

PLEINEMENT, *Pleinment*. L. Fr. Fully. *Art. sup. Chart.* c. 1. *Pleinement administre*; fully administered. *Hob.* 178 a.

PLENA ÆTAS. In old English law. Full age. See *Full age*. *Plenæ ætatis*; of full age.

PLENA PROBATIO. Lat. In the civil law. Full proof; proof by two witnesses or a public instrument. *Hallifax, Anal.* b. 3, c. 9, num. 25.

PLENARIE. L. Lat. Fully. *Fleta*, lib. 2, c. 64, § 19.

PLENARTY. [from Lat. *plenus*, full.] In English law. Fulness; a state of being full. A term applied to a benefice when full, or possessed by an incumbent. The opposite state to a *vacation*, or vacancy. *Cowell*.

PLENARY. [from *plenus*, full.] Full; complete; without abridgment.

PLENE ADMINISTRAVIT. L. Lat. (He has fully administered.) In practice. A plea by an executor or administrator, that he has fully administered all the assets that have come to his hands. 1 *Tidd's Pr.* 644. 2 *Arch. Pr.* 147. *Plene administraverunt*; they have fully administered. 10 *East*, 313.

PLENE ADMINISTRAVIT PRÆTER. Lat. (He has fully administered, except.) In practice. A plea by an executor or administrator, that he has fully

administered all the assets that have come to his hands, except assets to a certain amount, which are not sufficient to satisfy the plaintiff. 1 *Tidd's Pr.* 644. 2 *Arch. Pr.* 147.

PLENIPOTENTIARY. [from Lat. *plenus*, full, and *potentia*, power.] One who has full power to do a thing; a person fully commissioned to act for another. A term applied, in international law, to ministers and envoys of the second rank of public ministers. *Wheaton's Intern. Law*, part 3, ch. 1, § 6.

PLENUM DOMINIUM. Lat. In the civil law. Full ownership; the property in a thing united with the usufruct. *Calv. Lex*.

PLENUM RECTUM. L. Lat. In old English practice. Full right. Formal words in old writs, particularly writs of right. *Præcipimus vobis quod sine dilatione plenum rectum teneatis*; we command you that, without delay, you do full right. *Reg. Orig.* 1. *Bract.* fol. 328.

PLET, *Pleit*. L. Fr. A plea. *Kelham*. An older form of *plee*, and probably derived from the Lat. *placitum*.

PLEVIA. L. Lat. In old English law. Pledge; security. *Dimisit per pleviam*; released on surety. 3 *St. Trials*, 121.

PLEVINA. L. Lat. In old English practice. The engagement, undertaking or liability of a pledge or surety. *Plegii quieti erunt de plevina, nisi gratis velint eos sub eadem plevina retinere*; the pledges shall be quit of their engagement, unless they voluntarily choose to keep them under the same engagement. *Bract.* fol. 149 b. *Dimissionibus per plevinum*. *Fleta*, lib. 1, c. 20, § 97.

PLEVINE. L. Fr. In old English practice. Security by pledge; the engagement of a pledge. *Si il cele plevine refusa*; if he refuse this security. *Britt.* c. 27. Applied to the replevin of land. *Fet Assaver*, §§ 24, 25.

PLEVYS. L. Fr. Pledged; under pledge. *Britt.* c. 12.

PLEYN. L. Fr. [from Lat. *plenus*, full.] In old English law. Full. *En pleyn court*; in full court. *Britt.* c. 120.

PLEYNDRE. L. Fr. To complain. *Kelham*.

PLEYNTE. L. Fr. In old English law. A plaint or complaint. *A celuy vers que la pleynte est faite*; to him against whom the plaint is made. *Britt.* c. 58.

PLEYNTYFFE. L. Fr. [from *pleyndre*,

to complain.] In old English law. Plaintiff; a plaintiff; a complaining party. *Nul jugement ne se poit faire de meyns que de iii persones, cestasaver, de un juge, de un pleyntyfe, et de un defendaut;* no judgment (or judicial action in a suit) can take place with less than three persons, that is to say, a judge, a plaintiff and a defendant. *Britt. c. 22.*

This is the form of the word as it occurs throughout Britton. In the Year Books it is commonly written *pleintife*. In Littleton and the older reports in French, it is written *plaintife*, which has been converted into the modern word *plaintiff*, by the mere change of a letter. *Litt. sect. 195. Dyer, 55, et passim.* *Plaintife* is used throughout the older editions of Coke's commentary on Littleton, as an English word. Britton applies the word to the complaining party in an appeal and in a real action. *Britt. c. 22, 75.*

PLEYTO. Span. [from L. Lat. *placitum*?] In Spanish law. The pleadings in a cause. *White's New Recop. b. 3, tit. 7.*

PLIGHT. In old English law. An estate, with the habit and quality of the land; extending to a rent charge and to a possibility of dower. *Co. Litt. 221 b. Cowell.*

PL'ITM. A contraction of *placitum*. *Pl'ito*, of *placito*. 1 *Inst. Cl. 11.*

PLOMB, *Plumb*. L. Fr. [from Lat. *plumbum*.] In old English law. A leaden vessel or pipe. *Yearb. T. 9 Edw. III. 25.*

PLOUGH-BOTE. [L. Lat. *estoverium arandi*.] An allowance of wood made to a tenant, for repairing his ploughs and other instruments of husbandry. 2 *Bl. Com. 35.* See *Bote, Estovers*.

PLOUGH-LAND. [L. Lat. *carucata terræ*, q. v.] In old English law. A quantity of land allotted for the work of one plough; (*portio terræ quæ ad unius aratri operam designatur*.) *Spelman, voc. Carua.*

PLUMBATURA. Lat. [from *plumbum*, lead.] In the civil law. Soldering. *Dig. 6. 1. 23. 5.*

PLUMBUM. Lat. In the civil law. Lead. *Dig. 50. 16. 242. 2.*

PLURAL. [Lat. *pluralis*, from *plus*, *pluris*, more.] Containing more than one; consisting of two or more; designating two or more. *Webster.*

*Pluralis numerus est duobus contentus.* The plural number is contained in two. 1 *RoL. R. 476.* It is a rule of construction, that where a statute speaks of a thing

as a right, in the plural number, the singular is included. *Co. Litt. 369 a. Kent, C. 20 Johns. R. 693, 727.*

PLURALITER. L. Lat. In the plural. 10 *East*, 158, arg.

PLURIES. Lat. In practice. Oftentimes; many times; frequently. The emphatic word of a clause inserted in the Latin forms of writs which issued in the third instance, after a first and second (or *alias*) writ of the same kind had been already issued without effect. *Præcipimus tibi, (sicut PLURIES præceperimus) quod, &c.* We command you, (as we have often times commanded you,) that, &c. This clause has been literally translated, with the rest of the form, in modern writs, and the word *pluries* retained as the name both of the clause and the writ itself; the writ being in such case termed a *pluries* writ. 1 *Tidd's Pr. 147.* Bracton and Fleta use the word *sæpius*, which is identical in meaning: *Præcipimus tibi sicut SÆPIUS præceperimus, &c.* *Bract. fol. 441 b. Fleta, lib. 2, c. 67, § 4.* In the Register, the *pluries* clauses in writs are brought in by way of recital, thus: *Rez vic. salutem. Cum PLURIES tibi præceperimus quod, &c.*; The king to the sheriff, greeting: Whereas we have many times commanded you, that, &c. *Reg. Orig. 77 b, et passim.*

PLURIS PETITIO. Lat. In Scotch practice. A demand of more than is due. *Bell's Dict.*

PLURISVE. Lat. In the civil law. Or more. This expression was held to import not an indefinite, but a small amount. *Dig. 50. 16. 192.*

*Plus peccat autor quam actor.* The originator or instigator of a crime is a worse offender than the actual perpetrator of it. 5 *Co. 99 a, Flower's case.* Applied to the crime of subornation of perjury. *Id. ibid.*

*Plus valet unus oculatus testis quam auriti decem.* One eye-witness is of more weight than ten ear-witnesses, (or those who speak from hearsay.) 4 *Inst. 279.*

This maxim (or *regula juris*, as Lord Coke terms it,) is merely a line from Plautus, slightly varied:

*Pluris est oculatus testis unus, quam auriti decem : Qui audiunt audita dicunt : qui vident, plane sciunt. Truculentus, Act ii. Scen. vi.*

(One eye-witness is worth more than ten ear-witnesses; they who hear, say what they hear; they who see, know clearly.)

PLUSORS. L. Fr. Many; several. *Kelham*.

PO. LO. SUO. An old abbreviation of the words *ponit loco suo*, used in warrants of attorney. *Towns. Pl.* 431. 1 *Instr. Cler.* 12.

POACHING. In English criminal law. The unlawful entry upon land, for the purpose of taking or destroying game; the taking or destruction of game upon another's land, usually committed at night. *Steph. Crim. Law*, 119, *et seq.* 2 *Steph. Com.* 82. 4 *Id.* 307. The term seems to be rather a popular than a legal one.

POBLADOR. Span. In Spanish law. A colonizer; he who peoples; the founder of a colony. 11 *Howard's R.* 624, *arg.*

POCKET RECORD. A statute so called. *Brownl.* (part 2,) 81.

POCKET SHERIFF. In English law. A sheriff appointed by the sole authority of the crown, without the usual form of nomination by the judges in the exchequer. 1 *Bl. Com.* 342. 3 *Steph. Com.* 23.

POER, *Poeir*, *Poir*. L. Fr. Power; authority. *Tauntost finist le poer l'at-torne*; so soon ends the power of the attorney. *Britt.* c. 46.

POËT, *Poit*, *Puit*, *Pout*. L. Fr. May; can. *Ne poet*; may not; cannot. *Le seignior ne poet distreiner*; the lord may not (cannot distrain.) *Litt.* sect. 151. *Home poit tener*; a man may hold. *Id.* sect. 152. *Il poyt tener*; he may hold. *Id. ibid.*

PŒNA. Lat. In the civil law. Punishment; a penalty. *Inst.* 4. 6. 18, 19. *Dig.* 48. 19. 16. *Id.* 50. 16. 131. In old English law, it seems to have had the sense of damages. *Actio in rem persequitur rem ipsam, et pœnam propter injustam detentionem*; an action for a thing claims the thing itself, and damages for its wrongful detention. *Bract.* fol. 102 b.

*Pœna ex delicto defuncti hæres teneri non debet*. The heir ought not to be bound by a penalty arising out of the wrongful act of the deceased. 2 *Inst.* 198.

*Pœna suos tenere debet actores [auctores] et non alios*. Punishment ought to bind its own authors [those who have caused it,] and not others. *Bract.* fol. 380 b. *Fleta*, lib. 1, c. 38, § 12. *Id.* lib. 4, c. 17, § 17. *Pœna suos teneat auctores*. *Id.* lib. 1, c. 13, § 21.

*Quod a quoquo, pœnæ nomine, exactum est, id eidem restituere nemo cogitur*. That

which is exacted from any one in the name of a penalty, no one is compelled to restore to him. *Dig.* 50. 17. 46.

PŒNA CORPORALIS. Lat. In old English law. Corporal punishment. *Fleta*, lib. 2, c. 1, § 2. *Pœna pecuniaria*; pecuniary punishment. *Id. ibid.*

PŒNA PILLORALIS. L. Lat. In old English law. Punishment of the pillory. *Fleta*, lib. 1, c. 38, § 11.

PŒNALIS. Lat. [from *pœna*, q. v.] In the civil law. Penal; imposing a penalty; claiming or enforcing a penalty. *Actiones pœnales*; actions for penalties; penal actions. *Inst.* 4. 6. 12.

In *pœnalibus causis, benignius interpretandum est*. In penal causes, a more liberal interpretation should be made. *Dig.* 50. 17. 155. [197.] 2.

PŒNITENTIA. Lat. [from *pœnitere*, to repent.] In the civil law. Repentance; a change of mind or purpose; the rescinding of a contract. See *Locus pœnitentiæ*.

POI, *Poy*, *Pou*, *Po*. L. Fr. A little. *Kelham*.

POIND. See *Poynd*.

POINDING, *Poynding*. In Scotch law. A taking of goods, &c., in execution, or by way of distress.\* The distraining of one's moveable goods by authority of law, for his debts. 1 *Forbes' Inst.* part 3, p. 32.—A species of diligence, (i. e. process,) whereby the property of the debtor's moveables is transferred to the creditor. *Brande*. Real poinding takes effect upon the debtor's moveables on the lands to which the debt attaches; personal poinding, upon his moveables generally. *Id.*

POÏNE, *Poigne*. L. Fr. Hand; fist. *Kelham*. *LL. Gul. Cong.* l. 13.

POINT, *Poynt*, *Pointe*. L. Fr. An article; a point. Applied, in old law, to writs and statutes. *Points de nous breffs*; the points of our writs. *Britt.* fol. 3. *Pur ceo que les points de la graund chartre des franchis—ne ont pas este tenus*, &c.; forasmuch as the articles of the Great Charter of liberties have not been observed. *Artic. sup. Chart.* pr. See *Article*.

POIS, *Peys*. L. Fr. Weight. *Kelham*. See *Peys*.

POLCIER, *Pochier*. L. Fr. The thumb. *LL. Gul. Cong.* l. 13.

POLICE. Fr. Policy; a policy. *Police d'assurance*; a policy of insurance;

the contract of insurance. *Ord. Mar.* liv. 3, tit. 6, art. 2.

**POLICE DE CHARGEMENT.** Fr. In French law. A bill of lading. *Ord. Mar.* liv. 3, tit. 2.

**POLICY.** [from Ital. *polizza*, a note or memorandum in writing.] The written form in which a contract of insurance is expressed; a written instrument expressive of a contract of insurance, and by the execution of which the insurance is effected; a contract of insurance formally expressed in writing.\* A mercantile instrument in writing, by which one party, in consideration of a premium, engages to indemnify another against a contingent loss, by making him a payment in compensation, whenever the event shall happen by which the loss is to accrue. 2 *Steph. Com.* 172. See 3 *Kent's Com.* 257. 14 *Howard's R.* 362.

**POLETARIUS.** L. Lat. In old English law. A poulterer. *Fleta*, lib. 2, c. 14, § 3.

**POLETRIA.** L. Lat. In old English law. Poultry. *Fleta*, lib. 2, c. 87.

**POLL.** [Lat. *caput*.] A head; an individual person. More commonly used in the plural. See *Polls*.

**POLL.** [L. Fr. *polle*.] Cut or shaved smooth or even; cut in a straight line, without indentation. A term anciently applied to a deed, and still used, though with little of its former significance. 2 *Bl. Com.* 296. See *Deed poll*.

To **POLL.** In practice. To single out, one by one, of a number of persons. To examine each juror separately, after a verdict has been given, as to his concurrence in the verdict. 1 *Burr. Pr.* 238.

**POLLS.** [Lat. *capita*, q. v.] Heads; individuals; persons singly considered. A challenge to the *polls*, (*in capita*), is a challenge to the individual jurors composing the panel, or an exception to one or more particular jurors. 3 *Bl. Com.* 358, 361.

**POLLARDS.** A foreign coin of base metal, prohibited by statute 27 Edw. I. c. 3, from being brought into the realm, on pain of forfeiture of life and goods. 4 *Bl. Com.* 98. It was computed at two pollards for a sterling or penny. *Dyer*, 82 b.

A species of trees. *Ambl.* 134.

**POLLICITATIO.** Lat. [from *pollicitare*, to promise.] In the civil law. A promise, without mutuality. *Dig.* 50. 12. 3. *Grotius de Jur. Bel.* lib. 2, c. 11, § 3.

**POLL-MONEY.** [Lat. *capitatio*.] A tax ordained by act of parliament 18 Car.

2, c. 1, by which every subject in the kingdom was assessed by the head or poll, according to his degree. *Cowell*. A similar personal tribute was more anciently termed *poll-silver*. *Id.*

**POLL-TAX.** A tax levied by the head or poll; a capitation tax. *Webster*. A tax laid, in some of the United States, upon all male inhabitants of the state between certain ages. *Rev. Stat. of Mass.* (ed. 1836,) c. 7, § 1.

**POLYGAMIA.** Græco-Lat. [from Gr. *πολὺς*, many, and *γάμος*, marriage.] In old English law. Polygamy, (q. v.) *Polygamia est plurium simul virorum uxorumve connubium*; polygamy is the marriage of several husbands or wives at the same time. 3 *Inst.* 88.

**POLYGAMY.** [from Gr. *πολὺς*, many, and *γάμος*, marriage.] In criminal law. Literally, the marrying of many. The offence of having several wives or husbands at the same time; or more than one wife or husband at the same time. 3 *Inst.* 88. See *Polygamia*.

Polygamy is enumerated among offences by Lord Coke, but in modern law the term has been dropped, and *bigamy*, a term of the canon law, expressive of a different and merely spiritual offence, has been substituted in its place. See *Bigamy*.

**ΠΟΛΥΣΗΜΑ, Πολύσημα.** Gr. [from *πολὺς*, many, and *σημα*, a sign.] Of many significations. *Grot. de Jur. Bell.* lib. 2, c. 16, § 4.

**POMARIUM.** L. Lat. [from *pomum*, an apple.] In old English law. An apple tree. *Fleta*, lib. 2, c. 82, § 2.

In old pleading. An orchard. *Cro. El.* 854.

**POND** is defined by Callis, "a standing ditch cast by labour of man's hand, in his private grounds, for his private use, to serve his house and household with necessary waters; but a *pool* is a low plat of ground by nature, and is not cast by man's hand." *Callis on Sewers*, [82,] 103.

**Ponderantur testes, non numerantur.** Witnesses are weighed, not counted; that is, they are estimated by the weight or importance of their testimony, and not by their number. 1 *Stark. Evid.* 554. Mr. Best suggests that *testimonia* or *probationes* would be better than *testes*, as the rule is clearly not confined to verbal evidence. *Best on Evid.* 426, § 389.

**PONDUS.** Lat. In old English law. Poundage; literally, weight. A duty anciently paid to the king, according to

the weight and measure of merchants' goods. *Pat.* 1 Hen. III. m. 10. *Cowell.*

PONDUS REGIS. Lat. In old English law. The king's weight; the standard weight appointed by the king. *Cowell.* 1 *Bl. Com.* 276.

PONE. Lat. (Put.) In English practice. The name of a writ by which the proceedings in an action in the county court may be removed into one of the superior courts. 3 *Bl. Com.* 34, 36, 195. So called from the initial word of the mandate of the writ: PONE, *ad petitionem petentis, coram justitiariis nostris, &c. loquelam quæ est in comitatu tuo, &c.*; Put, at the request of [the demandant,] before our justices, &c. the plaintiff which is in your county court, &c. *Reg. Orig.* 6. 3 *Bl. Com.* Appendix, No. i. sect. 3.

PONE. Lat. (Put.) In English practice. The name given to the writ of attachment which formerly issued, on the non-appearance of a defendant at the return of the original writ, to compel his appearance. 3 *Bl. Com.* 280. So called from the initial word of the mandate of the writ; PONE *per vadium et salvos plegios G. de E. quod sit coram, &c.*; Put by gage and safe pledges, G. of E. that he be before, &c. *Reg. Jud.* 1. 3 *Bl. Com.* Appendix, No. iii. sect. 2. See *Fleta*, lib. 2, c. 65, § 12. This writ is still retained in the action of replevin. 3 *Steph. Com.* 666.

PONERE. L. Lat. In old English law. To put. A word of constant occurrence, and very various signification.

To put upon; to lay; to impose or assess, as an amercement or tax. *Nulla prædicatorum misericordiarum ponatur nisi per sacramentum proborum et legalium hominum, &c.*; none of the aforesaid amercements shall be assessed, unless by the oath of good and lawful men, &c. *Magna Charta*, c. 14. *Nullum tallagium vel auxilium ponatur seu levetur*; no tallage or aid shall be imposed or levied. *Stat. de Tallagio non Concedendo*, c. 1.

To put to; to compel. *Ponere ad legem*; to put to his law; to compel to wage his law. *Fleta*, lib. 2, c. 47, § 5. *Id.* c. 63, § 10. *Mag. Cart.* cited *ibid.*

To put in, or introduce one's person; to enter. *Se ponere in seysinam*; to put one's self into seisin or possession. *Bract.* fol. 161. *Quod possim me ponere in terram illam, et me tenere in terra illa*; that I may have the power to put myself into

that land, and hold myself in that land. *Id.* fol. 19 b. *Se ponere in rem locatam*; to put himself into the thing let. *Fleta*, lib. 2, c. 59, § 3.

To put upon; to rest upon or submit to, as a defendant did upon a jury. *Ponit se super patriam*; he puts himself upon the country. *Bract.* fol. 137 b. *Ponit se super linguas vestras*; puts himself upon your tongues; rests his fate upon your words. *Id.* fol. 143 b. *Et inde ponat se super juratam*; and thereof he should put himself upon the jury. *Id.* fol. 192 b. Said of the plaintiff. *Id. ibid.* *Ponit se inde in Deo et magna assisa*; put himself thereof on God and on the grand assise. *Fleta*, lib. 5, c. 39, § 1.

To put under; to place under liability; as to put under pledge, or "by" pledge, in the ancient phrase. *Pone per vadium et salvos plegios*; put by gage and safe pledges. See *Pone*. *Ponere per ballium*; to put by bail. *Rot. Cl.* 1 Edw. I. m. 7.

To put or place, in the sense of removal, as from one court to another. *Pone coram justitiariis, &c. loquelam, &c.*; put before the justices, &c. the plaintiff, &c.; that is, remove it. See *Pone*.

To put upon; to place among; to record one's name with others as a juror. *De non ponendis in assisis*; for not putting on assises. The titles of several old writs. *Reg. Orig.* 179. *F. N. B.* 165.

To put in; to put in the place; to substitute. *Ponit loco suo*; puts in his place.

To put; to set or let. *Ad firmam ponere*; to put or let to farm.

To put or set to; to affix, as a seal to an exception. See *Apponere*.

To put, fix or assign; to give or assign a day. *Tunc ponant ei diem à die visus sui*; then shall they assign him a day from the day of viewing him. *Bract.* fol. 352 b. *Fleta*, lib. 6, c. 10, § 17.

To put off, or postpone. *Ponere in respectum*; to put in respite. *Mem. in Scacc.* H. 22 Edw. I. *Jurata ponitur in respectum*; the jury is put in respite. *Towns. Pl.* 429. *Ponatur judicium usque ad bancum*; the judgment shall be put off to the bench. *Fleta*, lib. 4, c. 9, § 4.

PONTAGE. [L. Lat. *pontagium*, from *pons*, a bridge.] In old English law. A tax or contribution towards the maintenance or repair of bridges. *Stat. Westm.* 2, c. 25. *Fleta*, lib. 4, c. 1, § 16.

A toll for passing a bridge. *Cowell. Spelman.*

POOL. [Lat. *stagnum*.] A standing water, without any current or issue. *Calis on Sewers*, [82,] 102. See *Pond*.

POPULAR ACTION. An action for a statutory penalty or forfeiture, given to any such person or persons as will sue for it; an action given to the *people* in general. 3 *Bl. Com.* 160. See *Actio popularis*.

POPULISCITUM. L. Lat. In Roman law. An enactment, law or ordinance made by the *populus*, or whole Roman people; an ordinance made by the *comitia centuriata*. *Adam's Rom. Ant.* 193. The proper technical term, however, was *lex*. *Inst.* 1. 2. 4. *Taylor's Civ. Law*, 177, 178.

POPULUS. Lat. In the Roman law. The people; the whole body of the citizens, including, with the *plebs* or commonalty, the patricians and senators; (*appellatione populi universi cives significantur, connumeratis etiam patriciis et senatoribus*.) *Inst.* 1. 2. 4.

POR. L. Fr. For. An old form of *pour*. *Por ce*; for this; therefore. *Kelham*. *Por quei*; wherefore. *Id.*

PORT. [from Lat. *portus*, q. v.] A place for the importation, (bringing in,) and exportation, (carrying out,) of goods and merchandise. This seems to be the radical sense of the word. See *Portus*. 2 *Inst.* 148.

A place for the lading and unlading of the cargoes of vessels, and the collection of duties or customs upon imports and exports. A place, either on the sea-coast, or on a river, where ships stop for the purpose of loading and unloading, from whence they depart, and where they finish their voyages. *Curia Philippica*, p. 456, n. 35, cited in 7 *Martin's (La.) R.* 81, N. S. These are the ordinary senses of the word in modern law. See cases of particular construction, 1 *Phillips on Ins.* 461, *et seq.*

A shelter or safe station for vessels; a haven; a harbour. See *Harbour*.

\* \* *Port* and *harbour* are frequently used in law as synonymous terms, a quality derived from the Lat. *portus*, which undoubtedly expressed the ideas of both. In strictness, however, a clear distinction exists between them; *harbour* properly denoting the geographical or natural position of a place; *port*, its civil or artificial character. A *harbour* is provided by *nature* for the accommodation or shelter of *vessels*; a *port* is established by *law* for the reception of *cargoes*. *Harbour* physically includes *port*,

as the more general term; and ports in fact are almost invariably located in harbours. See 9 *Metcalf's R.* 377, 378. Hubbard, J. Every port may, therefore, be called a harbour, but *every harbour is clearly not a port*. A port, according to Lord Hale, is a haven and somewhat more. It is "*quid aggregatum*, consisting of somewhat that is natural, viz. an access of the sea, whereby ships may conveniently come; safe situation against winds, where they may safely lie, and a good shore where they may well unlade; somewhat that is *artificial*, as keys and wharves, and cranes and warehouses, and houses of common receipt; and something that is *civil*, viz. privileges and franchises, viz. *jus applicandi*, [the right of mooring,] *jus mercati*, [the right of market,] and divers other additions given to it by civil authority." *Hale, De Portibus Maris*, pars 2, c. 2. See 15 *East*, 295.

PORT. Fr. In French maritime law. Burthen (of a vessel.) *Ord. Mar.* liv. 1, tit. 10, art. 3.

Size and capacity. *Id.* liv. 1, tit. 14, art. 2.

PORTARE. L. Lat. In old English practice. To bear; to bring. *Portare assisam*; to bring an assise. *Bract.* fol. 177. The term "bring" is used in modern practice, in the same figurative sense. "To bring an action" is an every day phrase.

PORTARI. Lat. In the civil law. To be carried. Distinguished from *ferri*. *Dig.* 50. 16. 235.

PORTATICA. L. Lat. In old English law. Port-duties. *Hale de Jur. Mar.* pars 2, (de port. mar.) c. 6.

PORTENTA IN LEGE. Lat. Monstrosities in law; unheard of positions. *Bacon's Arg.* Low's case of Tenures, *Works*, iv. 239.

PORTEOUS, *Portuous*, *Portuis*. O. Sc. [from *portando*, carrying.] In old Scotch practice. A roll or catalogue containing the names of indicted persons, delivered by the justice-clerk to the coroner, to be attached and arrested by him. Otherwise called the *Porteous Roll*. *Bell's Dict. Skene de Verb. Signif.* A roll under this name is still regularly made up for each circuit. 1 *Pitc. Cr. Trials*, part 2, p. 34, note.

*Porteous*, *portuass*, *porthouse* or *portase*, generally denoted a breviary or mass-book, from its being *portable*. *Id. ibid.*

PORTER. L. Fr. [from Lat. *portare*,

q. v.] To bear. *Porter record*; to bear record. *Britt.* fol. 2 b. *En courte que porte record*; in a court which bears record; in a court of record. *Id.* c. 47. *Porter joy*; to bear faith. An expression in the old oath of fealty. *Britt.* c. 29. *Req. Orig.* 303. *Porter date*; to bear date. 1 *And.* 3. *Portant date.* *Dyer*, 93 b.

To bring. *Port action*; brought action, 1 *And.* 3. *Endett port.* *Id.* 4. *Une feme porta briefe de dower*; a woman brought a writ of dower. *Yearb.* T. 1 Edw. III. 1.

*Porter* and *portare* were usually applied to writs, and *arrainer* and *arrainare* to assises.

PORTGREVE, *Portreeve*. [L. Lat. *portgreffius*, *portgreffius*; from Sax. *port-gerefa*, from *port*, and *gerefa*, a reeve, bailiff or presiding officer.] In old English law. The chief officer of a port. *Spelman*.

The chief officer of a town or city, especially a sea-port town. The chief magistrate of London (now mayor) was called *portgreve* in the time of William the Conqueror. *Spelman*. *Cowell*. See *Mayor*.

PORTIONER. In Scotch law. The proprietor of a small feu or portion of land. *Bell's Dict.*

PORTORIUM. L. Lat. [from *porta*, a gate.] In old European law. A tax or toll levied at the gates of cities, for the reparation of roads. *Spelman*.

A tax levied at ports; a port duty; *Loccen. de Jur. Mar.* lib. 1, c. 8, sect. 6.

PORTMOTE. Sax. [from *port*, and *gemote*, a meeting.] In old English law. A court held in ports or haven towns, and sometimes in inland towns also. *Cowell*. *Blount*.

PORTUFORIUM. L. Lat. In Scotch practice. *Porteous*; the *porteous* or *porteous roll*, (q. v.) 1 *Pitc. Crim. Trials*, part 2, p. 34, note.

PORTUS. Lat. [from *portare*, to carry.] In the civil law. An enclosed place where merchandises are brought in, or imported, and whence they are carried out, or exported; (*conclusus locus quo importantur merces, et inde exportantur.*) *Dig.* 50. 16. 59.

An enclosed and protected station [for vessels?] (*statio conclusa atque munita.*) *Id. ibid.* *Loccen. de Jur. Mar.* lib. 1, c. 8, sect. 1.

\* \* The very brief terms in which these definitions are expressed, hardly serve to convey an adequate idea of the meaning of

the word. *Portus* is said to have originally denoted a ware-house, built with particular reference to safety against fire and robbery, (*domus mercium reponendarum causâ ita exstructa, ut ab incendiis furtisque tutior securiorque esset,*) and standing at a distance from other buildings, (*sejuncta ac munita a cæteris contiguâ edificiis;*) called *insula*, from the latter circumstance, and called *portus*, from *portare*, to carry, with reference to the carrying in, (*importando*), and carrying out (*exportando*), of the goods from it. *Calv. Lex.* Hence the term was afterwards used metaphorically, to denote a safe station for vessels and their cargoes. *Id. ibid.* *Portus*, however, clearly occurs in the sense of a natural harbour or haven, in early Roman writers.

Est in secessu longo locus: insula portum  
Efficit objectu laterum: quibus omnis ab alto  
Frangitur, inque sinus scindit sese unda reductos.  
*Virg. Æneid.* i. 159.

Far in a deep recess, an island's sides  
A harbor form against the advancing tides:  
Here every sea-wave breaks, and in smooth bays  
divides.

POSER. L. Fr. To put; to set at; to put a question. *Kelham.* *Et jéo pose*; and I put. *Yearb.* H. 8 Hen. VI. 7.

POSITIVE LAW. Law specifically ordained and adopted for the government of society, as distinguished from natural law.\* The sum of those principles which are acknowledged in a state as principles of law, and consequently have authority as such. 1 *Mackeld. Civ. Law*, 2, § 3.

POSITIVI JURIS. L. Lat. Of positive law. "That was a rule *positivi juris*; I do not mean to say an unjust one." Lord Ellenborough, 12 *East*, 639.

POSITO. L. Lat. Put; suppose. *Coke*, arg. 2 *Leon.* 176. *Keilw.* 68.

Posito uno oppositorum, negatur alterum. One of two opposite positions being affirmed, the other is denied. 3 *Roll. R.* 422.

POSSE. Lat. To be able; to be possible.

Possibility. A thing is said to be *in posse*, when it may possibly be; *in esse*, when it actually is. *Cowell*. *Wharton's Lex.*

Ability; power. *Pro posse suo*; to the extent of his power. *Bract.* fol. 19 b.

A force; a number of persons summoned to assist a sheriff in the execution of process. See *Posse comitatus*.

POSSE COMITATUS. L. Lat. The power or force of the county. The entire

population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, &c. 1 *Bl. Com.* 343. The most common instances of the use of this power in England, have been in cases where a possession has been kept upon a forcible entry, or any force or rescue used contrary to the command of the king's writ, or in opposition to the execution of justice. *Cowell. Stat. Westm.* 2, c. 39. *Assumpto secum posse comitatus sui in propria persona fac' executionem precepti regis*; having taken with him the power of his county, shall in proper person make execution of the king's precept. *Fleta*, lib. 2, c. 68, § 2.

This power is impliedly given by the Constitution of the United States. *Federalist*, No. 29.

The term *posse balliviæ*, (power of the bailiwick) occurs in the old books. *Fleta*, lib. 2, c. 47, § 1.

POSSESSIO. Lat. [from *possidere*, to possess.] In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. This condition of fact is called *detention*, and it forms the substance of possession in all its varieties. 1 *Mackeld. Civ. Law*, 234, § 229.

This definition is not approved by the learned editor of Mackeldey, who, in an elaborate note on the passage, gives his reasons for dissenting from it. It appears, however, to be more simply and intelligibly expressed than most of the civil law definitions of the word, which, in attempting to give the abstract essence of possession, are often involved in metaphysical subtleties, tending rather to obscure than to illustrate.

\* \* The old civilians, (Paulus in the Digests, quoting Labco,) derived *possessio* from *pedibus*, (the feet,) making it to be a sort of position, or putting down, (*quasi positio*;) and assigning as the reason, *quia naturaliter tenetur ab eo qui ei insistit*, (because possession of a thing is naturally held by him who stands upon it.) *Dig.* 41. 2. 1, pr. Hence the word was commonly analyzed *pedum positio*, a placing of the feet. The etymology was adopted, with the word itself, by Bracton, and from its peculiar adaptation to the old English idea of the *seisin of land*, took deep root in the terminology of that branch of the law. 3 Co.

42 a, *Ratcliff's case*. Through this channel it has found its way even into American law, and the phrase *pedis positio* (or *pedis possessio*) is frequently used in our reports to denote an actual corporeal possession, or a mere naked possession without right. The derivation, however, is no doubt radically incorrect, the true component elements of *possessio*, (or rather the verb *possidere*, from which it has been formed,) being *ponere sedem*, to place or *fix the seat* or abode, though even this is more significant in its application to real than to personal property. According to some, this was, in fact, the etymology given by the Roman jurists themselves, already named, *pedibus* being considered as a corrupt reading of *sedibus*. See 1 *Mackeld. Civ. Law*, 237, § 229, note. The Lyons ed. of the *Corpus Juris*, A. D. 1627, has *sedibus*, and the same reading is adopted in the Kriegel editions now in use. But this supposition weakens the force of *insistit*, (*stands upon*;) in the explanation given in the Digests, besides being inconsistent with the uniform current of *pedis positio*, and *pedum positio*, through the old English books.

POSSESSIO. Lat. In old English law. Possession; *seisin*. The detention of a corporeal thing by means of a physical act and mental intent, aided by some support of right; (*corporalis rei detentio*, i. *corporis et animi, cum juris adminiculo concurrente*.) *Bract.* fol. 38 b. See *Fleta*, lib. 3, c. 15, § 1.

\* \* Bracton treats *possessio* and *seisin* as synonymous, and considers possession under a multitude of subdivisions; as civil, (*civilis*) which was retained only by intention (*animo*;) natural, (*naturalis*;) which was held only by the physical act, (*corpore*;) rightful, (*justa*;) and wrongful, (*injusta*;) true, (*vera*;) and imaginary or fictitious, (*imaginaria*;) naked, (*nuda*;) where a person had no right in the thing nor any spark of right, but only a bare placing of the feet, (*tantum nudam pedum positionem*;) that is, a mere foothold or standing; clothed, (*vestita*;) as with right, title or prescription; with many others. There was also one kind which consisted of some degree of possession but no right, (*aliquid possessionis sed nihil juris*) as the possession of a guardian or creditor; another kind which consisted of a good deal of possession and a little right, (*multum possessionis et parum juris*;) as the possession of an ancestor who died seised, another having the mere right;

another kind which consisted of a great deal of possession and some right, (*plurimum possessionis et aliquid juris*;) as where one held land for a term by the grant of a person who demised it to him, but did not die seised; and a fourth kind, consisting of much possession and much right, (*multum possessionis et multum juris*;) as where one had the mere right in a thing, and the property of the fee, and the freehold with seisin, but of which he did not die seised. *Bract. fol. 39.*

**POSSESSIO BONORUM.** Lat. In the civil law. The possession of goods. More commonly termed *bonorum possessio*, (q. v.)

**POSSESSIO FRATRIS.** Lat. In the law of descent. Possession of a brother; an elliptical expression, signifying, in its full meaning, the kind of possession by a brother which would make his sister of the whole blood his heir, in preference to a brother of the half blood. See the maxim *infra*. Hence it is used in the books to denote the doctrine of the exclusion of the half blood from the succession to estates; a doctrine which, in England, has recently been abolished by statute 3 & 4 Will. IV. c. 106. 1 *Steph. Com.* 385—391. See *Broom's Max.* 233—235, [404.] And see, as to American law, 4 *Kent's Com.* 386—389.

*Possessio fratris de feodo simplici facit sororem esse hæredem.* The brother's possession of an estate in fee simple, makes the sister to be heir. *Litt. sect. 8. Co. Litt.* 15 b. 3 *Co.* 41 b, *Ratcliff's case*. The possession of a brother makes his sister of the whole blood his heir, in preference to a brother of the half blood. See *Broom's Max.* 233, [404.] This was a rule in the English law of descent down to a late period, and is best illustrated by the example given by Blackstone. If a man had two sons, A. and B. by different venters or wives, these two brethren were not brethren of the whole blood, and, therefore, according to a leading canon of descent, should never inherit to each other, but the estate should rather escheat to the lord. Nay, even if the father died, and his lands descended to his eldest son A. who entered thereon, and died seised without issue; still B. should not be heir to this estate, because he was only of the half blood to A. the person last seised, but *it should descend to a sister*, (if any,) of the whole blood to A. 2 *Bl. Com.* 227. See *Possessio fratris*.

**POSSESSION.** [from Lat. *possessio*, from *possidere*, to possess; from *ponere*, to put, and *sedes*, seat.] The state of having a corporeal thing in one's hands or power, or under one's control; or, in the words of the civil law definition,—that condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. See *Possessio*.

Possession expresses the closest relation of fact that can exist between a corporeal thing and the person who possesses it, implying either (according to its strict etymology,) an actual physical contact, as by *sitting* (or, as some would have it, *standing*) upon a thing; or the power to bring into such contact at pleasure. Thus, the possessor of land is, strictly, one who has actually taken up his residence (*qui posuit sedem*) upon it; the possessor of a chattel, one who either has it upon, or near his person, or within his reach.

Possession is generally considered in the common law under two leading aspects, viz.: as *united* with *right*, and as held without reference to, or in *opposition* to *right*; a simple division, which clears the subject of much of the subtlety and intricacy which mark the civilians' mode of treating it. See *Possessio*.

The elements of the word *possession* (*ponere sedem*) would seem to indicate that the term was originally applied chiefly to landed property; and the derivation, *ponere pedem*, expresses this idea yet more strongly. See *Possessio*. In the common law, however, *possession* has always been confined in its application to goods or chattels, *seisin* being the term invariably used to denote the possession of a freehold estate. See *Seisin*.

*Possession* is used in some of the books, in the sense of property. "A possession is an hereditament or chattel." *Finch's Law*, b. 2, ch. 3.

**POSSESSION MONEY.** In English practice. An allowance made to the person whom a sheriff puts in possession of goods taken under a writ of *fieri facias*. *Holthouse*.

**POSSESSOR.** Lat. and Eng. One who possesses; one who has possession. See *Possessio*, *Possession*.

**POSSESSORIUS.** L. Lat. [from *possessor*, q. v.] In old English law. Possessory. In *jure possessorio*. *Fleta*, lib. 6, c. 1, § 9.

**POSSESSORY.** Relating to possession; founded on possession; contemplating or claiming possession. See *infra*.

**POSSESSORY ACTION.** In practice. An action claiming possession, or the right of possession; an action brought to recover possession. The old writs of entry and assise were actions merely *possessory*, serving only to regain the possession of lands, but deciding nothing with respect to the right of property. 3 *Bl. Com.* 180.

In admiralty practice, a *possessory* suit is one which is brought to recover the possession of a vessel, had under a claim of title. 5 *Mason's R.* 465. 1 *Kent's Com.* 371.

An action founded on possession. Trespass for injuries to personal property is called a *possessory* action, because it lies only for a plaintiff who, at the moment of the injury complained of, was in actual or constructive immediate and exclusive possession. 1 *Chitt. Pl.* 168, 169.

**POSSESSORY JUDGMENT.** In Scotch practice. A judgment which entitles a person who has uninterruptedly been in possession for seven years, to continue his possession until the question of right be decided in due course of law. *Bell's Dict.*

**POSSIBILITAS.** Lat. In old English law. Possibility; a possibility. *Possibilitas post dissolutionem executionis nunquam reviviscatur*; a possibility will never be revived after the dissolution of its execution. 1 *Roll. R.* 321. After a possibility has become executed, it will not be revived by a dissolution of the estate, as by a divorce after intermarriage. *Post executionem status, lex non patitur possibilitatem*; after the execution of an estate, the law does not suffer a possibility. 3 *Bulstr.* 108.

**POSSIBILITY.** An uncertain event; a contingency which may or may not happen. An estate founded on such contingency. Of this there are various kinds.

A *bare* possibility is one that is not coupled with an interest; as that a son may inherit to his father who is living. This is not considered as an estate in law. 1 *Steph. Com.* 216. 4 *Kent's Com.* 262. 13 *Wendell's R.* 178. 1 *Hilliard's Real Prop.* 76.

A possibility *coupled with an interest*, is where the person, who is to take an estate upon the happening of a contingency, is ascertained and fixed. *Id. ibid.* 4 *Kent's Com.* 261, 262.

A *near* or common possibility is such as

death, or death without issue, or coverture. 4 *Kent's Com.* 206.

A *remote* possibility is such as a remainder to the heirs of a person not in being.\* *Id. ibid.*

**POSSIDERE.** Lat. [from *ponere*, to place, and *sedes*, seat.] To possess. A distinction was made in the civil law, and adopted by Bracton, between *possidere*, (to possess,) and *esse in possessione*, (to be in possession.) *Aliud est possidere, longe aliud in possessione esse.* *Dig.* 41. 2. 10. 1. *Longe aliud est possidere quam esse in possessione.* *Bract.* fol. 167 b. Thus, a guardian, holding in demesne though not in fee, was said to be *in possession*, though he did not *possess*. The same language was applied to a bailiff, (*procurator*), a domestic, (*servus proprius*), a fermor or lessee, (*firmarius*), and a tenant at will from day to day, and from year to year. *Id. ibid.* See *Fleta*, lib. 4, c. 3, § 1.

**POSSUMUS.** Lat. [from *possum*, *posse*, to be able.] We can; we can or may do. *Id possumus quod de jure possumus.* We can do that which we can do by law. *Lane*, 116. When we speak of what we *can do*, we mean what we can do *lawfully*. Mere physical ability to do an act is not regarded in law.

**POST.** L. Lat. In old practice. The name given to a species of writ of entry. See *Entry in the post*.

**POST.** Lat. After; afterwards. See *infra*.

**POST-ACT.** An after-act; an act done afterwards. See *Post-factum*.

**POST CONQUESTUM.** L. Lat. After the Conquest. *Bract.* fol. 7. Words first used in the titles of the kings of England by Edw. III. A. D. 1328, in order to distinguish the Edwards after the Conquest from those before it. *Cowell. Blount.*

**POST DIEM.** Lat. In pleading. After the day. See *Solvit post diem*.

In old practice. The return of a writ after the day assigned. *Cowell.* A fee paid in such a case. *Id.*

**POST-DISSEISIN.** [L. Lat. *post disseisina*.] In old English practice. A disseisin committed, after a recovery of seisin of the same land, and by the same person against whom the recovery was had. See *De post disseisina*.

**POST-FACTUM, or POSTFACTUM.** Lat. An after-act; an act done afterwards; a post-act.

*Post*, in this compound word, is an ad-

verb, having the full sense of *afterwards*; the word itself being the correlative of *ante-factum*, a fore-act, or previous act. *Utrum ne in post-facta—an etiam in ante-facta. A. Gell. Noct. Att. lib. xvii. c. 7.* In the derived phrase *ex postfacto*, however, *post* has generally been treated by those who have attempted to translate it, not only as a distinct word, but as a preposition governing *facto*, in violation of one of the simplest rules of grammar. See *Ex postfacto*.

**POST FINE.** In old conveyancing. A fine or sum of money, (otherwise called the *king's silver*,) formerly due on granting the *licentia concordandi*, or leave to agree, in levying a fine of lands. It amounted to three-twentieths of the supposed annual value of the land, or ten shillings for every five marks of land. 2 *Bl. Com.* 350.

**POST LITEM MOTAM.** L. Lat. After suit moved, or commenced. Depositions in relation to the subject of a suit, made after litigation has commenced, are sometimes so termed. 1 *Stark. Evid.* 319.

After dispute moved; after controversy stirred or begun; after dispute has arisen. In questions of pedigree, it is a rule that declarations made *post litem motam* are not admissible in evidence; that is, declarations made *after a dispute has arisen*, out of which a suit has grown, will be excluded. *Hubback's Evid. of Succession*, 660. Berkley Peerage case, 4 *Camp.* 401. The line of distinction in such cases is the *origin of the controversy*, and not the commencement of the suit. Mansfield, C. J. *Id.* 417.

**POSTMAN.** In English practice. The senior barrister attending constantly at the bar of the Court of Exchequer, who had the privilege of moving there before the king's Attorney and Solicitor-General and all his majesty's counsel. *Bunb. pref. note.*

Bunbury, the reporter, had been many years *postman* at the Exchequer bar. *Id.* pref.

**POST MORTEM.** Lat. After death. A name given to inquisitions anciently taken after the death of tenants *in capite*. *Hubback's Evid. of Succession*, 584. Now commonly applied to examinations of a dead body by a coroner.

**POST-NATUS, (or POSTNATUS.)** Lat. After-born. A second son was so called in old English law, as distinguished from the eldest. *Est consuetudo in quibusdam partibus, quod postnatus præfertur primogenito et è contrario*; it is a custom

in some parts, that an after-born son is preferred to the first-born, and *è contra*. *Bract. fol. 76.* See *Id.* fol. 33. *Fleta*, lib. 3, c. 9, § 9.

Born after a particular period or event. *Postnati* (after-born persons) is used in the books, as the correlative of *antenati*, to denote the subjects of Scotland born after the union of the crowns, and Americans and British subjects born in the United States after the declaration of independence. 7 *Co. 1, Calvin's case.* 2 *Kent's Com.* 56—59. *Lord Bacon's Argument*, Case of the *Postnati* of Scotland, *Works*, iv. 319, 334, 344.

**POST NOTE.** In mercantile law. A note payable at a future day, as distinguished from a note payable on demand. A note made and issued by a bank or banking association, payable at a future day, and designed as a part of its circulating medium. 22 *Penn. St. R.* 479. In New-York, notes of this kind are declared illegal. 3 *Denio's R.* 70. 3 *Barbour's R.* 226. See 3 *Comstock's R.* 21.

**POST OBIT BOND.** [Lat. *post obitum*, after death.] A bond given by an expectant, to become due on the death of a person from whom he will have property. *Wharton's Lex.*—A bond or agreement given by a borrower of money, by which he undertakes to pay a larger sum, exceeding the legal rate of interest, on or *after the death* of a person from whom he has expectations, in case of surviving him. *Chesterfield v. Janssen*, 2 *Vesey*, 125. 1 *White's Equity Cases*, 344. 1 *Story's Eq. Jur.* § 342. These contracts are discouraged by the courts, who hold a strict hand over them.

**POST PROLEM SUSCITATAM.** L. Lat. After issue born, (raised.) *Co. Litt.* 19 b.

**POST TERMINUM.** L. Lat. (After term, or post-term.) The return of a writ, not only after the day assigned for its return, but after the term also, for which a fee was due. *Cowell.* The fee itself. *Id.*

**POSTEA.** Lat. (Afterwards.) In practice. The name given to the entry, on record, of the proceedings on the trial of a cause, including the verdict of the jury; so called from the word (*postea*) with which it commenced when the proceedings were in Latin; and which has been literally translated in the modern forms: "*Afterwards*, that is to say," &c. *Steph. Pl.* 87. 3 *Bl. Com.* 386. In form,

it is the return made by the judge who tried the cause, to the court in banc, of what took place at the trial. In English practice, it is first entered on the back of the *nisi prius* record, and is the ground upon which judgment is afterwards entered.

**POSTERIORITY.** [L. Lat. *posterioritas*.] In old English law. A coming after, or being behind; the correlative of *priority*. A man holding of two lords, was said to hold of the more ancient lord by *priority*, and of the later lord by *posteriority*. *Staundf. Præc. Reg.* 10, 11. *Cowell*.

**POSTERITY.** [Fr. *postérité*; Lat. *posteritas*, from *posterus*, from *post*, after.] Descendants; those who come after. Declared, by the civil code of Louisiana, to comprehend all the descendants in the direct line. *Art.* 3522, num. 26.

**POSTHUMOUS CHILD.** [Lat. *posthumus*, from *post*, after, and *humus*, earth, or *humatus*, buried.] A child born after the death of its father. *2 Bl. Com.* 169. Posthumous children of an intestate inherit in all cases, in like manner as if they were born in the lifetime of the intestate, and had survived him. *4 Kent's Com.* 412.

**POSTLIMINIUM.** Lat. [from *post*, after, and *limen*, a threshold.] In the civil law. The return or restoration of a person to a former estate or right; sometimes Englished *postliminy*. A fiction applied in the case of a person who had been taken a prisoner by an enemy, and afterwards returned from captivity, by which he was supposed never to have been abroad, and was on this ground restored to his former rights. *Postliminium fingit eum qui captus est in civitate semper fuisse*; postliminy supposes that he who was taken prisoner had always been in the state. *Inst.* 1. 12. 5. See *Dig.* 49. 15.

*Postliminium* included things as well as persons. Paulus, in the Digests, defines it to be *jus amissæ rei recipiendæ ab extraneo, et in statum pristinum restituendæ, inter nos ac liberos populos regesque moribus, legibus constitutum. Nam quod bello amissimus, aut etiam citra bellum, hoc si rursus recipiamus dicimur postliminio recipere*; (the right of receiving a lost thing from a foreigner, and of restoring it to its former state, established between us and free nations and kings, by customs and by laws. For whatever we have lost in war, or even not in war, if we receive it again, we are

said to receive it *postliminio*.) *Dig.* 49. 15. 19, pr.

*Postliminium* is thus analyzed and explained in the Institutes. It is called *postliminium* from *limen*, (threshold,) and *post*, (after.) Wherefore we properly say of one who was taken by an enemy, and afterwards came into our borders or limits, that he has returned *postliminio*. For as the threshold of a house makes, as it were, the limit or boundary of it, so the ancients chose to call the boundary or border of the empire its threshold. Hence *limen* (a threshold) came to be used in the sense of a limit, (*finis*), and boundary, (*terminus*.) And hence the word *postliminium* was framed, and used to signify that a person had returned to the same threshold which he had lost; (*ab eo postliminium dictum est, quia ad idem limen revertebatur quod amiserat*.) So that now a prisoner who is recovered from an enemy and returns home, is supposed to have returned in postliminy, [that is, in the way explained.] *Inst.* 1. 12. 5.

**POSTLIMINIUM.** Lat. In the law of nations. A right which arises from a return in *limen*, that is, to the borders of one's country. *Grotius De Jur. Bell.* lib. 3, c. 9, § 2. A term derived from the Roman law, and extensively used in public law. See its etymology explained by *Grotius De Jur. Bell.* lib. 3, c. 9, § 1. See his whole chapter, *De Postliminio*. The term is used in maritime law. See *Loccenius de Jur. Mar.* lib. 2, c. 4.

**POSTNUPTIAL SETTLEMENT.** A settlement made *after marriage* upon a wife or children; otherwise called a *voluntary settlement*. *2 Kent's Com.* 173.

**POSTULARE.** Lat. In the Roman law. To ask or demand; to ask of a judicial tribunal, (*pro tribunali petere*.) *Dig.* 39. 2. 4. 8. See *Postulatio*.

To accuse or denounce. *Dig.* 3. 1. *Calv. Lex*.

**POSTULATIO ACTIONIS.** Lat. In the Roman law. The demand of an action; the request made to the prætor by an actor or plaintiff, for an action, or formula of suit; corresponding with the application for a writ in old English practice. *Adam's Rom. Ant.* 243. Or, as otherwise explained, the actor's asking of leave to institute his action, on appearance of the parties before the prætor. *Hallifax, Anal.* b. 3, c. 9, num. 12.

**POTENTIA.** Lat. [from *potens*, able,

from *posse*, to be able.] In old English law. A possibility. *Potentia propinqua*; a near or common possibility. 2 *Bl. Com.* 169. *Potentia remotissima*; a most remote or improbable possibility. *Id.* 170.

Power. *Potentia debet sequi justitiam, non antecedere*. Power ought to follow justice, not go before it. 3 *Bulstr.* 199, Coke, C. J.

*Potentia inutilis frustra est*. Useless power is to no purpose. *Branch's Pr.*

*Potest quis renunciare pro se, et suis, juri quod pro se introductum est*. One may relinquish for himself and his [heirs,] a right which was introduced for his own benefit. *Bract.* fol. 20.

POTESTAS. Lat. Power; a power. The word *potestas*, in Roman law, had several significations; in the person of magistrates, it was called *imperium*; in the person of children, *patria potestas*; in the person of a slave, *dominium*. *Dig.* 50. 16. 215.

*Potestas stricte interpretatur*. A power is strictly interpreted. *Jenk. Cent.* 17, case 29, in marg.

*Potestas suprema seipsam dissolvere potest, ligare non potest*. Supreme power can dissolve, [unloose] but cannot bind itself. *Branch's Pr.* *Bacon*.

*Potior est conditio defendentis*. The condition of a defendant is the better one. Where both parties are equally in fault, the defendant has the better case, or will be favored in preference to the plaintiff. Lord Mansfield, *Cowp.* 343. See *In pari delicto*, &c.

*Potior est conditio possidentis*. The condition of the party in possession is the better. Where the right or the fault between two parties is equal, the party in possession is favored or preferred. See *In æquali jure*, &c., *In pari causa*, &c., *In pari delicto*, &c.

POULTRY COUNTER, (or COMP-TER.) The name of a prison formerly existing in London. 2 *Mod.* 306. 6 *Id.* 247. See *Counter*.

POUND. [from Sax. *pund*; Lat. *libra*.] A standard weight, consisting either of twelve ounces, called *troy* weight, or of sixteen ounces, called *avoirdupois* weight. See *Troy weight*, *Avoir du pois*, *Libra*.

In New-York, the unit or standard of weight, from which all other weights shall be derived and ascertained, is declared to be the *pound*, of such magnitude that the weight of a cubic foot of distilled water,

at its maximum density, weighed in a vacuum with brass weights, shall be equal to sixty-two and a half such pounds. 1 *N. Y. Rev. St.* [607,] 617, § 8.

POUND. [L. Lat. *parcus*.] An enclosure; an enclosed place in which cattle or goods distrained are shut up.\* 3 *Bl. Com.* 12. A *pound-overt* is one that is open overhead; a *pound-covert* is one that is close, or covered over, such as a stable or other building.\* *Id.* 13. But, according to Lord Coke, a pound is called *open*, because the owner may give his cattle meat and drink, without trespass to any other. *Co. Litt.* 47 b.

POUND BREACH. [L. Lat. *parci fractio*.] The act or offence of breaking a pound, for the purpose of taking out the cattle or goods impounded. 3 *Bl. Com.* 12, 146.

POUNDAGE. In practice. An allowance made to a sheriff upon the amount levied under an execution; estimated in England, and formerly in the United States, at so much on the *pound*.

In old English law. A subsidy to the value of twelve pence in the *pound*, granted to the king, of all manner of merchandise of every merchant, as well denizen as alien, either exported or imported. *Cowell*.

POUNT. L. Fr. [from Lat. *pons*.] In old English law. A bridge. *Pountz*; bridges. *Britt.* c. 51.

*Pountage*; pontage. A tax levied for the repair of bridges. *Britt.* c. 30.

POUR, *Pur*. L. Fr. For. *Suffit à eux pur seisin pour la proprete*; it suffices them for seisin for the property. *Britt.* c. 37. *Pour cheu ke* (pour *ceo que*;) because. *Kelham*.

POUR AUTRE VIE. L. Fr. For another's life. *Pur terme d'autre vie*; for the term of another's life. *Litt.* sect. 56.

POURE, *Pouer*, *Power*, *Povre*. L. Fr. [from Lat. *pauper*.] Poor. *Poure ou ryche*; poor or rich. *Britt.* c. 68. *Kelham*.

POURE, *Pouwer*, *Poer*, *Poir*, *Poir*. L. Fr. Power; force; strength; authority. *Kelham*.

POUR COMPTE DE QUI IL APPARTIENT. Fr. For account of whom it may concern. *Emerig. Tr. des Ass.* ch. 11, sect. 4, § 3. A phrase in insurance law.

POUR SEISIR TERRES, &c. L. Fr. (For seizing the lands, &c.) In old practice. A writ by which the king seized the

land which the wife of a tenant *in capite*, deceased, had for her dower, if she married without his leave. *Cowell*.

**POURCHASE.** L. Fr. A purchase. *Cowell*. See *Purchase*.

**POURPARTY.** L. Fr. [L. Lat. *pro pars, propartis, propartia*.] In old English law. Division; a divided share. Literally, *for*, or as *divided*, (*pour parti*;) a close translation of the Lat. phrase *pro diviso*.\* To make *pourparty*, is to divide and sever the lands that fall to parceners, which, before partition, they held jointly and *pro indiviso*. *Cowell*.

**POURPRESTURE**, (or **PURPRESTURE**. [from L. Fr. *pourpris*, an enclosure.] The wrongful enclosing of another's property, or the encroaching or taking to one's self that which ought to be in common. *Holthouse*. A species of nuisance by erecting a house, or making an enclosure upon any part of a highway, or common street, or public water, or such like public things. *Co. Litt.* 277. 4 *Bl. Com.* 167. See *Angell on Tide-waters*, ch. 7, p. 198.

Glanville defines *pourprestura* to be "properly, when any occupation is wrongfully made upon the king, (*quando aliquid super dominum regem injuste occupatur*;) as in the king's demesnes, or in public roads, by obstructing them, (*vel in viis publicis obstructis*;) or in public waters, by turning them out of their proper channel, (*vel in aquis publicis transversis a recto cursu*;) or when any one in a city occupies the king's highway by erecting some building upon it, (*vel quando aliquis, in civitate, super regiam platcam, aliquid ædificando occupaverit*;) and generally, whenever any thing is done to the nuisance of the king's tenement, or of the king's way or city. *Glanv.* lib. 9, c. 11.

Crompton defines *pourpresture* to be "properly, when a man taketh unto himself or incroacheth any thing that he ought not, whether it be in any jurisdiction, land or franchise; and generally when any thing is done to the nuisance of the king's tenants." *Crompt. Jurisd.* fol. 152.

**POURVEYANCE.** L. Fr. and Eng. [from Fr. *pourvoir*, to provide.] In old English law. The providing corn, (grain,) fuel, victual and other necessities for the king's house. *Cowell*. See *Purveyance*.

**POURVEYOR.** [from Fr. *pourvoir*, to provide.] In old English law. An officer of the king or queen, or other great personage, that provided corn (grain) and

other victual for their house. *Cowell*. See *Purveyor*.

**POUSTIE**, *Poistee*. Sc. In Scotch law. Power. 1 *Pitc. Crim. Trials*, part 1, p. 162. See *Liege poustie*. A word formed from the Lat. *potestas*.

**POVERS.** L. Fr. In old English law. Poor persons. *En primes, voit le roy que common droiture soit fait à tous, auxybien as povers come as riches, sans regard de nulluy*; in the first place the king wills that common justice be done to all, as well to the poor as to the rich, without regard to any (without respect of persons.) *Stat. Westm.* 1, c. 1.

**POWER.** [Lat. *potestas*, q. v.] An authority which one gives to another, either to act for him generally, or to do some specific act in his behalf; as to execute a deed, to make a contract, &c. See *Power of attorney*. An authority which enables one person to do an act for another. 2 *Crabb's Real Prop.* 678.

An authority, as distinguished from an estate. 1 *Steph. Com.* 505.

In a technical sense. An authority enabling a person to dispose, through the medium of the statute of uses, of an interest, vested either in himself, or in another person. *Sugden on Powers*, 82. 6 *Co.* 17 b.—An authority expressly reserved to a grantor, or expressly given to another, to be exercised over lands, &c. granted or conveyed at the time of the creation of such power. *Watkins on Conv.* 157.—A proviso, in a conveyance under the statute of uses, giving to the grantor or grantee, or a stranger, authority to revoke or alter by a subsequent act the estate first granted. 1 *Steph. Com.* 505.—A right to limit a use. 4 *Kent's Com.* 316.—An authority to revoke a use first limited, or to declare a new one. 1 *Steph. Com.* *ub. sup.*

Powers are either mere *powers of revocation*, enabling the grantor simply to recall what he has bestowed, or *powers of revocation and new appointment*, authorizing the grantor, or some other person, to alter or make a new disposition of the estate conveyed. *Id. ibid.* All powers are, in fact, powers of revocation and appointment. Every power of appointment is strictly a power of revocation; for it always postpones, abridges or defeats, in a greater or less degree, the previous uses and estates, and appoints new ones in their stead. 4 *Kent's Com.* 315, 316. See 2 *Hilliard's Real Prop.* 557, *et seq.*

**POWER OF ATTORNEY.** An instrument in writing, under seal, by which the party executing it appoints another to be his *attorney*, and *empowers* such attorney to act for him, either generally in all matters or business, or specially, to do some specified act or acts in his name and behalf. Formerly, and still occasionally, called a *letter of attorney*, (q. v.)

**POÿ, Poi.** L. Fr. Little; a little. *Tout à poy*; all but little; very nearly the same; almost the whole of. *Kelham*. *Par poy et par poy*; by little and little. *Britt.* c. 51. *Un poy d'enk*; a little ink. *Kelham*.

**POYN, Poin, Poine, Poigne.** L. Fr. [from Lat. *pugnus*, fist.] In old English law. Hand. *Le rybaud perde son poynd dunt il trespasa*; the ruffian shall lose his hand, wherewith he has trespassed. *Britt.* c. 25.

**POYND, Poind.** Sc. In Scotch law. A distress; goods taken for a debt. *Skene de Verb. Sign.* voc. *Namare*.

To take goods as a distress; to distrain. *Id. ibid.*

**POYNINGS' LAWS.** A set of statutes enacted in the tenth year of Henry VII. (so called from Sir Edward Poynings being then lord deputy,) regulating the method of passing statutes in Ireland. 1 *Bl. Com.* 102. By another of these laws it was enacted that all acts of parliament, before made in England, should be of force within the realm of Ireland. *Id.* 103. 4 *Inst.* 351, 353.

**P'P'M.** A contraction of *perpetuum*. 1 *Inst. Cler.* 11.

**PRACTICA.** L. Lat. Practice; the practice of a court. *Clerke's Prax. Cur. Adm.* tit. 42.

**PRACTICE.** [L. Lat. *practica, praxis, cursus curiae*.] The course of procedure in courts. The form and manner of conducting or carrying on, in the way either of prosecution or defence, of suits, actions and other judicial proceedings, at law or in equity, civil or criminal, through their various stages, according to the principles and regulations prescribed by law, or by the rules and decisions of the several courts.

In a general sense, *practice* includes *pleading*, though it is usually distinguished from it.

**PRACTICE COURT.** A court attached to the Court of Queen's Bench, and presided over by one of the judges of that

court, in which points of practice and pleadings are discussed and decided. *Holt-house*. It originated from the *Bail Court*, formerly held by one of the judges, and is still most commonly called by that name. *Id.*

**PRACTICKS.** In Scotch law. The decisions of the Court of Session, as evidence of the *practice* or custom of the country. *Bell's Dict.*

**PRÆBENDA.** L. Lat. In old English law. A prebend. *Bract.* fol. 442 b. *Fleta*, lib. 2, c. 54, § 10; c. 69, § 3.

An allowance of fodder for horses and cattle. *Fleta*, lib. 2, c. 76, § 8.

**PRÆCEPTORES.** L. Lat. Masters. The chief clerks in chancery were formerly so called, because they had the direction of making out remedial writs. *Crabb's Hist. Eng. Law*, 184, 547. 2 *Reeves' Hist.* 251. *Fleta*, lib. 2, c. 13, § 12.

**PRÆCEPTUM.** L. Lat. [from *præcipere*, to command.] In old criminal law. Command. The act of an accessory who *commands* another to commit a crime. *Fleta*, lib. 1, c. 31, § 8.

**PRÆCIPE.** Lat. (Command.) In practice. An original writ, drawn up in the alternative, *commanding* the defendant to do the thing required, *or* show the reason why he had not done it. 3 *Bl. Com.* 274. So called from its initial word in the old Latin forms: *Rex vicecomiti salutem: PRÆCIPE A. quod juste et sine dilatione reddat B. &c.* The king to the sheriff, greeting. *Command A.* that justly and without delay he render to B. &c. *Reg. Orig.* 4. *Fleta*, lib. 2, c. 62, § 6, *et seq.*

A paper containing the particulars of a writ, filed in the office out of which it is to be issued, and intended as the clerk's instructions for making it out.

**PRÆCIPE IN CAPITE.** L. Lat. In old practice. A *præcipe* or writ of right, which lay for a tenant *in capite*. *Reg. Orig.* 4 b. Called a writ of right close. *Fleta*, lib. 6, c. 10, § 2.

**PRÆCIPE QUOD REDDAT.** L. Lat. (Command—that he render.) In practice. Formal words in a *præcipe*, or original writ. See *Præcipe*.

**PRÆCIPE QUOD TENEAT CONVENTIONEM.** L. Lat. (Command—that he keep the covenant.) In conveyancing. A writ of covenant upon which fines were usually levied at common law. 2 *Bl. Com.* 350. 3 *Id.* 156.

**PRÆCIPERE.** Lat. To command.

The usual word of command in the mandates of the old writs. *Mandare* (to command,) is used only in some special cases. See *Mandamus*.

**PRÆCIPIMUS.** Lat. We command. An emphatic or initial word in most of the old Latin writs. *Rex vic. (or A.) salutem : Præcipimus vobis (or tibi,) &c. Reg. Orig. 1, et passim.*

**PRÆCISE.** L. Lat. Specifically. *Fleta*, lib. 2, c. 60, § 22.

**PRÆCO.** Lat. In the Roman law. A herald or crier. *Adam's Rom. Ant.* 189, 190.

In modern practice. The crier of a court. *Bacon's Works*, iv. 316.

**PRÆCONIZARE.** L. Lat. [from *præco*, a crier.] In old practice. To call in court; to make proclamation (by a crier.) *Clerke's Prax. Cur. Adm.* tit. 8.

**PRÆD'**. An abbreviation of *prædictus*. 6 *Mod.* 176.

**PRÆDEDUCERE.** L. Lat. [from *præ*, before, and *deducere*, to deduct.] In old practice. To deduct first, or in the first instance. *Fleta*, lib. 2, c. 57, § 10.

**PRÆDIA.** Lat. [pl. of *prædium*, q. v.] In the civil law. Lands; estates.

*Prædia rustica*; rural or country estates; estates or lands principally destined for the production of fruits. 1 *Mackeld. Civ. Law*, 338, § 309.

*Prædia urbana*; city estates, especially dwelling-houses, whether situated in town or country, stables, walls, building sites, storehouses, granaries and the like. *Dig.* 50. 16. 198. *Id.* 8. 4. 1, pr. 1 *Mack. Civ. Law*, ub. sup. See *Prædium urbanum*.

**PRÆDIA VOLANTIA.** L. Lat. Volatile estates. A phrase mentioned by Blackstone, as applied, in the duchy of Brabant, to certain things moveable. 2 *Bl. Com.* 428.

**PRÆDIAL, (or PREDIAL) SERVITUDE.** [Lat. *servitus prædiorum*.] A right which is granted for the advantage of one piece of land over another, and which may be exercised by every possessor of the land entitled against every possessor of the servient land. It always presupposes two pieces of land (*prædia*), belonging to different proprietors; one burdened with the servitude, called *prædium serviens*, and one for the advantage of which the servitude is conferred, called *prædium dominans*. 1 *Mackeld. Civ. Law*, 335, § 306. *Inst.* 2. 3. *Dig.* 8. 1—6. *Bract.* fol. 220 b, 221. *Schultes on Aquatic Rights*, 26.

**PRÆDICT'**. An abbreviation of *prædictus*, (q. v.) 10 *Mod.* 305.

**PRÆDICTUS, PRÆDICTA, PRÆDICTUM.** L. Lat. In old pleading. Aforesaid; the aforesaid. *Fleta*, lib. 2, c. 64, § 21. A word of constant occurrence in old entries, and varied by different forms of abbreviation; as *præd'*, *prædict'*, *p'dc'us*, &c. *Towns. Pl.* 15. *Hob.* 117. 10 *Co.* 65. 1 *Ld. Raym.* 192.

Of the three words, *idem*, *prædictus* and *præfatus*, (all corresponding with the English *said*, and *aforesaid*,) *idem* was most usually applied to plaintiffs or demandants; *prædictus* to defendants or tenants, places, towns or lands; and *præfatus* to persons named, not being actors or parties. *Towns. Pl. ub. sup.* See 11 *East*, 508, arg. 12 *Id.* 559. *Prædictus* refers to the last antecedent. *Comb.* 461.

**PRÆDIUM.** Lat. In the civil law. Land; a piece of land; an estate. Called a *nomen generale*, including *ager* and *possessio*. *Dig.* 50. 16. 115.

*Prædium rusticum*; a rural or country estate; an estate or piece of land principally destined or devoted to agriculture; an empty or vacant space of ground without buildings. 1 *Mackeld. Civ. Law*, 338, § 309, and Kaufmann's note.

*Prædium urbanum*; an urban or city estate; any other than a *prædium rusticum*; any building, whether in town or country, and whether used for a dwelling, or for business or farming purposes. *Id. ibid.* and note. *Urbanum prædium non locus facit, sed materia.* *Dig.* 50. 16. 198.

*Prædium dominans*; a dominant or ruling estate. See *Prædial servitude*.

*Prædium serviens*; a serving estate. See *Id.*

**PRÆDIUM.** Lat. In old English law. Estate; property. Applied to the estate or title of the king, as lord paramount of all the lands in the kingdom. *Co. Litt.* 1 b. See *Dominicum directum*.

**PRÆDO.** Lat. In the Roman law. A robber. See *Dig.* 50. 17. 126.

**PRÆFATUS.** L. Lat. In old pleading. Aforesaid. A word of very common use in old entries; sometimes abbreviated *præfat'*, and *p'fat'*. 6 *Mod.* 176. See *Prædictus*.

**PRÆFECTURÆ.** Lat. In Roman law. Conquered towns, governed by an officer called a *prefect*, who was chosen in some instances by the people, in others, by the prætors. *Butler's Hor. Jur.* 29.

**PRÆFECTUS.** Lat. In the Roman

law. A chief officer; a governor or commander. The title of various officers and magistrates. *Dig.* 1. 11. *Id.* 1. 12. *Id.* 1. 15. *Cod.* 1. 28. *Calv. Lex.*

In old English law. The chief officer of a hundred, and other divisions. *Spelman*, voc. *Præpositus*.

PRÆJUDICIALIS. Lat. [from *præ*, before, and *judicare*, to judge.] In the civil law. That which is to be pre-determined, or decided before something else. See *Actio præjudicialis*.

PRÆJUDICIUM. L. Lat. In old English law. Prejudice; detriment; disparagement. *Bract.* fol. 19. *Sine præjudicio melioris sententiæ*; without prejudice to the better opinion. *Id.* fol. 48. A common phrase used by Bracton, when expressing his own opinion on any point.

PRÆJURAMENTUM. L. Lat. In old English law. A preparatory oath. See *Antejuramentum*.

PRÆMISSA. L. Lat. [from *præmittere*, to send before.] In old conveyancing. Things sent before; things mentioned, stated or recited before, *præmisses* or *premisses*. In modern phraseology, *premises*. *Fleta*, lib. 3, c. 10, § 1. See 1 *Leon.* 117. See *Premises*.

PRÆMIUM. Lat. Reward; compensation. *Præmium assecurationis*; compensation for insurance; premium of insurance. *Loccen. de Jur. Mar.* lib. 2, c. 5, sect. 6. Now used in the law of insurance, as a common English word.

PRÆMIUM PUDICITIÆ. Lat. The price of chastity; or compensation for loss of chastity. A term applied to bonds and other engagements given for the benefit of a seduced female. Sometimes called *premium pudoris*. 2 *Wils.* 339, 340.

PRÆMUNIRE. L. Lat. In English law. To forewarn, or summon. *Præmuniantur omnes de comitatu*; all persons of the county shall be forewarned. *Fleta*, lib. 1, c. 19, § 1. Used indifferently with *præmonere*. *Partibus præmonitis*; the parties being summoned. *Id. ibid.*

The name of an offence against the king and his government, though not subject to capital punishment. So called from the words of the writ which issued preparatory to the prosecution: *Præmunire facias* A. B. *quod sit coram nobis*, &c.; cause A. B. to be forewarned, that he appear before us to answer the contempt with which he stands charged. 4 *Bl. Com.* 103. *Co. Litt.* 129 b.

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The statutes establishing this offence, the first of which was made in the thirty-first year of the reign of Edward I., were framed to encounter the papal usurpations in England; the original meaning of the offence called *præmunire* being the introduction of a foreign power into the kingdom, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone. *Id.* 110, 115. The penalties of *præmunire* were afterwards applied to other heinous offences. *Id.* 116, 117. 4 *Steph. Com.* 215—217.

PRÆNOMEN. Lat. Fore-name, or first name. The first of the three names by which the Romans were commonly distinguished. It marked the individual, and was commonly written with one letter; as A. for Aulus; C. for Caius, &c. *Adam's Rom. Ant.* 35. See *Fleta*, lib. 4, c. 10, § 9. *Butler's Hor. Jur.* 28.

PRÆNOTARIUS. L. Lat. In old English law. Prothonotary. A clerk of the Court of Common Bench. *Fleta*, lib. 2, c. 36. *Id.* lib. 4, c. 9, § 2.

Præpropera consilia raro sunt prospera. Hasty counsels are rarely prosperous. 4 *Inst.* 57.

PRÆPOSITUS. Lat. [from *præponere*, to put first, or set over.] In old English law. One who was set over others; a chief or presiding officer. The sheriff was the *præpositus* of the county. *LL. Edw. Sen.* c. 11. 3 *Bl. Com.* 36.

*Præpositus ecclesiæ*; a church-reeve, or warden. *Spelman*. In Scotch law, the head of a collegiate church. *Bell's Dict.*

*Præpositus hundredi*; a hundredary. *Spelman*.

*Præpositus villæ*; a town-reeve, (Sax. *tungerif*.) *Id.* See *Fleta*, lib. 2, c. 39, § 2.

*Præpositus manerii*; the overseer of a manor. An officer under the *ballivus*, (bailiff.) *Fleta*, lib. 2, c. 76. Called, in law French, *provost*, (q. v.) *LL. Gul. Cong.* l. 6, and note.

PRÆROGATIVA REGIS. L. Lat. In old English law. The king's prerogative. *Crabb's Hist.* 204. See *De Prærogativa Regis, Prerogative*.

PRÆSCRIPTIO. Lat. [from *præscribere*, to write before, (to draw a line before?) to fix a limit.] In the civil law. That mode of acquisition whereby one becomes proprietor of a thing on the ground that he has for a long time possessed it as his own; prescription. *Dig.* 41. 3. 1 *Mackeld.*

*Civ. Law*, 290, § 276. It was anciently distinguished from *usucapio*, (q. v.) but was blended with it by Justinian. *Heinecc. Elem. Jur. Civ. lib. 2, tit. 6, § 438.*

**PRÆSCRIPTIO.** Lat. [in old English law. Prescription. *Præscriptio est titulus ex usu et tempore substantiam capiens, ab auctoritate legis*; prescription is a title deriving its substance from use and [length of] time, under the authority of law. *Co. Litt.* 113 a.

**PRÆSENS.** Lat. [plur. *præsentes*.] Present. *Præsens in curia*; present in court. 2 *Salk.* 544. *Præsentes litteræ*; the present letters. See *Presents*. *Sciant præsentes et futuri*; Know those who are present, and those who are to be. *Bract.* fol. 34 b.

**PRÆSENTIA.** Lat. [from *præsens*, present.] Presence. *Præsentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis.* The presence of the body, [or corporeal thing itself,] removes [or cures] error of the name; and the truth of the name removes [or cures] error of demonstration or description. *Bacon's Max.* 96, reg. 25. This maxim is based upon three degrees of certainty, mentioned by Lord Bacon; presence, (*præsentia*;) name, (*nomen*;) and demonstration or reference, (*demonstratio*;) "whereof the presence the law holdeth of greatest dignity, the name in the second degree, and the demonstration or reference in the lowest." *Id. ibid.* The maxim itself is composed of two parts or branches, which may be separately considered.

*Præsentia corporis tollit errorem nominis.* The presence of a body, person, or thing, removes [the effect of] error of [in the] name [of it.] If the object of a contract be present, an error in the name does not vitiate it. 2 *Kent's Com.* 557. Thus, "if I give a horse to *J. D.* being present, and say unto him, '*J. S.* take this,' this is a good gift, notwithstanding I call him by a wrong name." *Bac. Max. ub. sup.* For the presence of the grantee gives a higher degree of certainty to the identity of the person, than the mention of his name. 2 *Kent's Com. ub. sup.* "So if I say unto *J. S.* here, I give you my ring with the *ruby*, and deliver it with my hand, and the ring bear a *diamond*, and no *ruby*, this is a good gift, notwithstanding I name it amiss." *Bac. Max. ub. sup.*

*Veritas nominis tollit errorem demonstrationis.* The truth of the name or denomi-

nation of a thing removes [takes away or obviates the effect of] error in the demonstration [addition or description] of it. If the subject of a contract be once properly and certainly named, a falsity of addition or demonstration, that is, of additional description, will not prejudice it. Thus, "if I grant my close, called Dale, in the parish of Hurst, in the county of Southampton, and the parish likewise extendeth into the county of Berkshire, and the whole close of Dale lieth in the county of Berkshire, yet, because the parcel is especially named, the falsity of the addition hurteth not." *Bacon's Max.* 100. See 2 *Kent's Com.* 557. 1 *Edw. Ch. R.* 189. See *Falsa demonstratio non nocet.* A maxim frequently applied in the construction of wills. 8 *Taunt.* 313.

**PRÆSES.** Lat. In the Roman law. A president, or governor. *Dig.* 1. 18. 1. Called a *nomen generale*, including pro-consuls, legates, and all who governed provinces. *Id. ibid.*

**PRÆSIDIUM.** Lat. In the civil law. A guard; a fortress; a defence, aid or shelter. See *Infra præsidia.*

In records of the middle ages,—all household stuff or effects, including particularly gold and silver. *Spelman.* Every kind of property, real as well as personal, (*omnis vis bonorum, tam immobilium quam mobilium.*) *Id.*

**PRÆSTARE.** Lat. In old English law. To pay, give or render; to make or execute; to perform. See *Præstatio*. *Præstitit sacramentum*; made oath, or took an oath. *T. Raym.* 34. 2 *Ld. Raym.* 1376. *Mem. in Scacc.* P. 16 *Edw. I.*

To make good. *Præstare tenetur quodcunque damnum obveniens in mari*; [the insurer] is bound to make good any loss happening on the sea. 3 *Kent's Com.* 291.

In old European law. To lease, or let to farm. *Chart. Alaman.* 75. *Spelman.*

**PRÆSTARIA, Præstarium.** L. Lat. In old European law. A lease or farm, (*elocatio, dimissio.*) *Spelman.*

The instrument of letting or leasing, (*charta elocationis vel dimissionis.*) *Id.*

The land itself, let or leased; a farm land; (*prædium ipsum, elocatum vel dimissum.*) *Id.*

*Præstat cautela quam medela.* Prevention is better than cure. *Co. Litt.* 304 b. "As it is in physick, for the health of a

man's body, so it is in remedies, for the safety of a man's cause." *Id. ibid.*

**PRÆSTATIO.** L. Lat. [from *præstare*, q. v.] In old English law. A payment or giving; such as a relief (*relevium*) and a heriot, (*herietum*.) *Fleta*, lib. 3, c. 17, § 1. *Id.* c. 18. Sometimes Englished *prestation*, (q. v.)

**PRÆSUMERE.** Lat. [from *præ*, before, and *sumere*, to take.] In civil and old English law. To take before; to presume; to anticipate. See *Præsumptio*, *Presumption*.

**PRÆSUMITUR.** Lat. It is presumed; the presumption is. *Præsumatur*; it should be presumed; the presumption should be.

**Præsumatur pro justitia sententiæ.** The presumption should be in favor of the justice of a sentence. *Mascard. de Prob.* concl. 1237, n. 2. *Best on Evid.* Introd. 42.

**Præsumitur pro legitimatione.** The presumption is in favor of legitimacy. 1 *Bl. Com.* 457. 5 *Co.* 98 b, *Bury's case*.

**PRÆSUMPTIO.** Lat. [from *præsumere*, (q. v.) Gr. *πρόσληψις*.] In civil and old English law. Presumption; a presumption. See the definitions in *Burr. Circ. Ev.* 10, note (a.)

*Præsumptio probabilis*; probable presumption. *Co. Litt.* 6 b. *Præsumptio levis*; light or slight presumption. *Id. ibid.* Called *levior*, (slighter.) *Hub. Præl. Jur. Civ.* lib. 22, tit. 3, n. 15. *Præsumptio violenta*; violent or strong presumption. *Co. Litt. ub. sup.*

**Præsumptio violenta plena probatio.** Strong presumption is full proof. *Co. Litt.* 6 b.

**Præsumptio violenta valet in lege.** Strong presumption is of weight in law. *Jenk. Cent.* 56, case 3.

**PRÆSUMPTIO FORTIOR.** Lat. A strong (literally, stronger) presumption (of fact.) One which determines the tribunal in its belief of an alleged fact, without, however, excluding the belief of the possibility of its being otherwise; the effect of which is to shift the burden of proof to the opposite party, and if this proof be not made, the presumption is held for truth. *Hub. Præl. J. C.* lib. 22, tit. 3, n. 16. *Burr. Circ. Ev.* 66.

**PRÆSUMPTIO HOMINIS.** Lat. The presumption of the man or individual; that is, natural presumption unfettered by strict rule. *Heinec. ad Pand.* pars 4, s. 124.

**PRÆSUMPTIO JURIS.** Lat. A presumption of law; the ordinary kind of presumption, in which the law assumes the existence of something, until it is disproved by evidence; a conditional, inconclusive or rebuttable presumption. *Best on Evid.* 40, § 43. *Best on Presump.* 20, § 17. 1 *Greenl. Evid.* § 33.

**PRÆSUMPTIO JURIS ET DE JURE.** Lat. A presumption of law, and from law, that is, a presumption inferred by law from premises of law. Defined by Alciatus, "*dispositio legis aliquid præsumendis, et super præsumpto, tanquam sibi comperto, statuentis*," a disposition of law which presumes something, and upon such presumption, as though ascertained to itself, determines. *Alc. Tract de Præs.* pars 2, n. 3. "It is called *præsumptio juris*," says Menochius, "because it is a presumption made by law, and *de jure*, because the law holds for truth the presumption thus made, and establishes a fixed right upon it." *Menochius de Præs.* lib. 1, quæst. 3, n. 17. *Best on Presumptions*, 20, § 17. Called, by the common lawyers, an irrebuttable presumption; an inference which the law makes so peremptorily, that it will not allow it to be overturned by any contrary proof, however strong. Thus, where a cause has once been regularly adjudicated upon by a competent tribunal, from which there either lies no appeal, or the time for appealing has elapsed, the whole matter assumes the form of *res judicata*, and evidence will not be admitted, in subsequent proceedings between the same parties, to show that decision erroneous. *Id. ibid.* So, an infant under the age of seven years, is not only presumed incapable of committing felony, but the presumption cannot be rebutted by the clearest evidence of a mischievous discretion. 1 *Hale's P. C.* 27. 4 *Bl. Com.* 23. See 1 *Greenl. Evid.* § 15. *Burr. Circ. Ev.* 46.

**PRÆSUMPTIO.** L. Lat. In old English law. A taking before another; a species of intrusion. *Spelman*.

**PRÆTEXTUS.** Lat. [from *prætendere*, to cover.] In old English law. A pretext; a pretence or color. *Prætextu cuius*; by pretence, or under pretext whereof. 1 *Ld. Raym.* 412.

**Prætextu liciti non debet admitti illicitum.** Under pretext of legality, what is illegal ought not to be admitted. *Wingate's Max.* 728, max. 196.

**PRÆTOR.** Lat. [from *præire*, to go

before.] In the civil law. The chief judicial magistrate among the Romans, who exercised an extensive equity jurisdiction. *Hallifax, Anal.* lib. 3, c. 8, num. 2. *Dig.* 1. 14. *Cod.* 1. 39. *Adam's Rom. Ant.* 128. 1 *Mackeld. Civ. Law*, 20, § 30. 1 *Story's Eq. Jur.* §§ 5, 50.

The governor of a province. See *Nov.* 24, pr. *Nov.* 25, pr. *Nov.* 29, c. 2. *Tayl. Civ. Law*, 210.

**PRÆTOR FIDEI-COMMISSARIUS.** Lat. In the civil law. A special prætor created to pronounce judgment in cases of trusts or *fidei-commissa*. *Inst.* 2. 23. 1. 2 *Story's Eq. Jur.* § 966. Called, by Lord Bacon, a "particular chancellor for uses." *Bacon on the Stat. of Uses, Law Tracts*, 315. 4 *Kent's Com.* 290.

**PRÆVARICATOR.** Lat. In the civil law. One who betrays his trust, or is unfaithful to his trust. An advocate who aids the opposite party by betraying his client's cause. *Dig.* 47. 15. 1. Used in Spanish law. *Las Partidas*, part. 3, tit. 6, l. 15.

**PRÆVENTO TERMINO.** L. Lat. In old Scotch practice. A form of action known in the forms of the Court of Session, by which a delay to discuss a suspension or advocacy was got the better of. *Bell's Dict.*

**PRAGMATIC SANCTION.** In the civil law. A species of imperial rescript. See *Pragmatica sanctio*.

**PRAGMATICA.** Span. In Spanish colonial law. An order emanating from the sovereign, and differing from a *cedula* only in form, and in the mode of promulgation. *Schmidt's Civ. Law*, Introd. 93, note.

**PRAGMATICA SANCTIO.** Lat. In the civil law. A rescript of the emperor, in answer to the petition of a corporation or public body, (*corpus aut schola, vel officium, vel curia, vel civitas, vel provincia, vel quædam universitat hominum ob causam publicam.*) *Cod.* 1. 23. 7.

**PRATUM.** Lat. In the civil law. A meadow. *Dig.* 50. 16. 31. Said to be derived from *paratum*, (prepared,) *quod paratum sit ad fructum capiendum.* *Id.* *ib.*

In old English law. A meadow. *Co. Litt.* 4 b.

**PRAXIS.** Lat. Practice. *Clerke's Prax. Cur. Adm.* *Praxis judicum est interpret legum.* The practice of the judges is the interpreter of the laws. *Branch's Pr.*

**PRAY IN AID.** In old English practice. To call upon for assistance. In real actions, the tenant might *pray in aid*, or call for assistance of another, to help him to plead, because of the feebleness or imbecility of his own estate. 3 *Bl. Com.* 300. See *Aid-prayer*.

**PREAMBLE.** [from Lat. *præ*, before, and *ambulare*, to walk, or go.] The introduction or commencement of a statute, setting forth, by way of recital, the intention of the legislature in framing it, the circumstances which occasioned its passage, &c. In English statutes, it commences with the word "*Whereas.*" In the old French statutes, it commonly began with "*Pur ceo que,*" (forasmuch as,) and in the Latin, with "*Quia,*" "*Cum,*" or words of similar import. See *Sedgwick on Stat. & Const. Law*, 54—57.

**PRE-AUDIENCE.** The right of being heard before another. A privilege belonging to the English bar, the members of which are entitled to be heard in their order, according to rank, beginning with the Queen's attorney-general, and ending with barristers at large. 3 *Bl. Com.* 28, note. 3 *Steph. Com.* 387, note.

**PREBEND.** [Lat. *præbenda*, from *præbere*, to supply.] In English ecclesiastical law. A stipend or revenue ;\* that portion which every member or canon of a cathedral church receives, in the right of his place, for his maintenance. *Cowell.* It is neither a dignity nor a benefice. 5 *Taunt.* 2.

**PREBENDARY.** [Lat. *præbendarius*, from *præbenda*, q. v.] In English ecclesiastical law. One that has a *prebend*, (q. v.) *Cowell.* The stipendiary of a cathedral or collegiate church. *Webster.*

**PRECARIÆ, or PRECES.** L. Lat. In old English law. Days' works, which the tenants of some manors were bound, by reason of their tenure, to do for the lord in harvest. Vulgarly called *bind-days*, which Spelman supposes to be a corruption of *biden-days*, which in Saxon answered to *dies precariæ*, (literally, *pray-days*, or *prayed-days*,) the Sax. *biden* signifying to pray. *Spelman.* *Cowell.*

**PRECARIUM.** Lat. [from *precari*, to pray.] Precarious; held as it were by mere entreaty; depending on the will and pleasure of another. *Precarium nomen*; a precarious title. *Cowell.* See *Jus precarium*.

In the civil law. A gratuitous loan

upon request, in which the lender grants the use of the subject in express words, revocable at pleasure. *Dig.* 43. 26. *Bell's Dict.*

**PRECATORY WORDS.** Words of entreaty, request, desire, wish or recommendation, employed in wills, as distinguished from direct and imperative terms. 1 *Williams on Exec.* 88, 89, and note. Sometimes held to create a trust. 1 *Jarman on Wills*, [334,] 332.

**PRECE PARTIUM.** L. Lat. On the prayer of the parties. See *Dies datus*.

**PRECEDENT.** [from Lat. *præcedens*, from *præcedere*, to go before.] That which goes before, or takes place before. See *Condition precedent*.

**PRECEDENTS.** Authorities to be followed in courts of justice. A term particularly applied to judicial decisions upon points of law arising in any given case. 1 *Kent's Com.* 475, 476. These are recognized in equity as well as at law. 1 *Story's Eq. Jur.* § 18. The old books are full of expressions in support of precedents. See *Jenk. Cent.* viii. See *Stare decisis*.

Written forms of proceedings which have been approved by the courts, or by long professional usage, and are to be (usually strictly) followed.\* *Steph. Pl.* 392. Lord Bacon observes that there are *political* as well as legal precedents. *Works*, iv. 354.

*President* (q. v.) occurs as a form of this word, in the old books.

**PRECEPT.** [from Lat. *præceptum*, from *præcipere*, to command.] In practice. A command in writing; a species of writ or process.

In English law. A process issued by a justice of the peace, or other like officer, for the bringing of a person or records before him. *Cowell*.

A direction sent by the sheriff, under seal, to the proper returning officers of cities and boroughs, commanding them to elect their members to parliament. 1 *Bl. Com.* 177.

In American practice. A process issued under seal, by the district attorney of a county, to the sheriff, commanding him to summon a jury, &c. 2 *N. Y. Rev. St.* [206,] 133, §§ 37, 38.

A process in the nature of an attachment against a person. 1 *Burr. Pr.* 339.

**PRECEPT.** In Scotch law. An order, mandate or warrant to do some act. The

precept of seisin was the order of a superior to his bailie, to give infeftment of certain lands to his vassal. *Bell's Dict.*

**PRECEPT.** In old French law. A kind of letters issued by the king in subversion of the laws, being orders to the judges to do or tolerate things contrary to law. *Esprit des Loix*, liv. 31, c. 2.

**PRECEPT.** [L. Lat. *præceptum*, q. v.] In old English criminal law. Instigation or commandment to commit a crime. *Bract.* fol. 138 b. *Cowell*.

**PRECES.** Lat. In the Roman law. Prayers. One of the names of an application to the emperor. *Tayl. Civ. Law*, 230.

**PRECIUM.** Lat. In old English law. Price. *Fleta*, lib. 2, c. 60, § 21. See *Pretium*.

**PRECLUDI NON**, (or *Precludi non debet*, ought not to be barred.) In pleading. The commencement of a replication to a plea in bar, being in the following words:—"says that, by reason of any thing in the said plea alleged, he *ought not to be barred* from having and maintaining his aforesaid action against him the said defendant, because he says," &c. *Steph. Pl.* 398. So called, from the emphatic words in the old Latin forms, of which the modern form is a translation.

**PRECOGNOSCE.** Sc. [from Lat. *præcognoscere*.] In Scotch practice. To examine beforehand. *Arkley's R.* 232.

**PRECOGNITION.** In Scotch practice. Preliminary examination. The investigation of a criminal case, preliminary to committing the accused for trial. 2 *Alison's Crim. Pract.* 134.

**PRE-CONTRACT.** A contract made before another contract, but having relation especially to marriages. *Cowell.* 1 *Bl. Com.* 434.

**PREDECESSOR.** Lat. and Eng. [from *præcedere*, to go before.] One who goes or has gone before; the correlative of *successor*. Applied to a body politic or corporate, in the same sense as *ancestor* is applied to a natural person. *Termes de la Ley*, voc. *Ancestor*. See *Ancestor*, *Antecessor*.

In Scotch law. An ancestor. 1 *Kames' Equity*, 371.

**PREDIAL** (or **PRÆDIAL**.) [Lat. *prædialis*, from *prædium*, land.] That which arises or comes from the ground.

**PREDIAL** (or **PRÆDIAL**) **TITHES.** [L. Lat. *decimæ prædiales*.] In English ecclesiastical law. Tithes arising from the

profits of lands, as of corn, (grain,) grass, hops and wood. 2 *Bl. Com.* 24.

**PRE-EMPTION.** [Lat. *præ-emptio*, from *præ*, before, and *emptio*, a buying.] In English law. The first buying of a thing. A privilege formerly enjoyed by the crown, of buying up provisions and other necessities, by the intervention of the king's purveyors, for the use of his royal household, at an appraised valuation, in preference to all others, and even without consent of the owner. 1 *Bl. Com.* 287.

In American law. A privilege enjoyed by government in relation to Indian lands. Congress have the exclusive right of *pre-emption* to all Indian lands lying within the territories of the United States. 8 *Wheaton's R.* 543. 1 *Kent's Com.* 257.

**PREE, Pre, Pree.** L. Fr. [from Lat. *pratium*, q. v.] A meadow. *Arrer les prees*; to plough the meadows. *Britt.* c. 5. *Dyer*, 33. Finch uses *pree* as an English word. *Law*, b. 1, ch. 3, num. 27.

**PREGNOTARIUS.** L. Lat. In old practice. A prothonotary. 1 *Leon.* 92.

**PREIGNOTHORY.** O. Eng. [L. Lat. *pregnotarius*.] In practice. Prothonotary. 3 *Leon.* 48, 128.

**PREJUDICE.** [from Lat. *præjudicium*, from *præ*, before, and *judicare*, to judge.] Literally, a judging beforehand; a judging before examination.

Detriment; damage; loss.

**PREMISES, (properly PREMISSES,** from Lat. *præmissa*, q. v.) Literally, things put before, or stated before; matter previously stated or set forth.

In conveyancing. One of the formal and orderly parts of a deed or conveyance, consisting of all that *precedes* the *habendum*; including the date, the parties' names and descriptions, the recitals, (if any,) the consideration and the receipt thereof, the grant, the description of the things granted, and the exceptions, (if any.) See 2 *Bl. Com.* 298. 1 *Steph. Com.* 449. *Shep. Touch.* 75. *Burton's Real Prop.* 167, 168. *Cruise's Dig.* tit. xxxii. ch. 21. 2 *Hilliard's Real Prop.* 333. The office of this part of the deed is said to be, "rightly to name the grantor and grantee, and to comprehend the certainty of the thing granted." *Shep. Touch. ub. sup. Co. Litt.* 6 a.

In modern conveyancing, the word *premises* is also used to denote merely the thing demised or granted by the deed.

This departure from the proper meaning of the word is noticed by Sheppard. *Shep. Touch.* 75. It seems to have occurred at a very early period. See *Fleta*, lib. 3, c. 10, § 1. In the expression, "messuage or dwelling-house, and *premises*," the word "premises" may include another messuage. 3 *M. & S.* 169.

The subject matter insured in a policy. 4 *Campb.* 89.

**PREMIUM.** [from Lat. *præmium*, reward.] The sum paid or agreed to be paid by an assured to the insurers, as the consideration for the insurance; being a certain rate per cent. on the amount insured. 1 *Phillips on Ins.* 205. 3 *Kent's Com.* 253.

The price of a risk. See *Prime*.

**PRENDA.** Span. In Spanish law. Pledge. *White's New Recop.* b. 2, tit. 7.

**PRENDER.** L. Fr. [from *prendre*, from Lat. *prehendere*, to take.] Taking; the power or right of taking a thing before it is offered. A thing was said to lie *in prender*, where it was something to be taken by the party to be entitled to it, such as estovers in woods; and to lie *in render*, where it was something to be paid or rendered to the party by another, such as rent. See the difference between these explained in *Brownl. & Goldsb.* 35.

**PRENDER DE BARON.** L. Fr. In old English law. A taking of husband; marriage. An exception or plea which might be used to disable a woman from pursuing an appeal of murder against the killer of her former husband. *Staundf. Pl. Cor.* lib. 3, c. 59.

**PREPENSE.** L. Fr. Before-thought. Called *purpensed* in *LL. Gul. Cong.* l. 1. See *Malice aforethought*.

**PREROGATIVE.** [from Lat. *prærogativa*, from *præ*, before, and *rogare*, to ask.] Literally, the privilege of being *asked first*; or, according to Blackstone, something that is required or demanded before, or in preference to all others.

In English law. That special pre-eminence which the king [or queen] has over and above all other persons, in right of his [or her] regal dignity. A term used to denote those rights and capacities which the sovereign enjoys alone, in contradistinction to others. 1 *Bl. Com.* 239.

This term is usually derived from the Lat. *prærogativa* or *prærogativus*, which was used among the Romans to denote a precedence among the centuries or tribes

in voting, or the privilege of voting first; the century or tribe which had such privilege being so called from *præ*, before, and *rogare*, to ask or give a vote. *Adam's Rom. Ant.* 97. *Crabb's Hist. Eng. Law*, 204. According to Lord Coke, *prerogative* denotes, in its proper sense, the privilege of the royal assent to acts passed by the houses of parliament, which must be asked and obtained *before* such acts can become laws. *Co. Litt.* 90 b.

**PREROGATIVE COURT.** In English law. A court established for the trial of all testamentary causes, where the deceased had left *bona notabilia* within two different dioceses; in which case, the probate of wills belonged to the archbishop of the province, by way of special prerogative. And all causes relating to the wills, administrations or legacies of such persons were originally cognizable herein, before a judge appointed by the archbishop, called the judge of the Prerogative Court; from whom an appeal lay to the privy council. 3 *Bl. Com.* 66. 3 *Steph. Com.* 432.

The name of a court in the state of New-Jersey. *Rev. Stat.* tit. 7, c. 4.

**PREROGATIVE WRIT.** In practice. A writ issued upon some extraordinary occasion, and for which it is necessary to apply by motion to the court; a writ not issuing as of mere course, without showing some probable cause why it should be granted. 3 *Bl. Com.* 132. The writs of *procedendo*, *mandamus*, prohibition, *quo warranto*, *habeas corpus* and *certiorari* belong to this class. 3 *Steph. Com.* 681, *et seq.*

Prerogative writs have also been distinguished from writs ministerially directed, viz. those issued to the sheriff; the prerogative writs being generally directed to no sheriff or minister of the court, but to the public or private parties whose acts are the subject of complaint. 2 *Burr.* 855. 3 *Steph. Com.* 681, note.

**PRES.** L. Fr. Near. *Cy pres*; so near; as near. See *Cy pres*.

**PRESBYTER.** Lat. [from Gr. *πρεσβύτερος*, elder, from *πρεσβύς*, old.] In civil and ecclesiastical law. An elder; a presbyter; a priest. *Cod.* 1. 3. 6, 20. *Nov.* 6.

**PRESCRIBE.** To claim, or allege a title to a thing, on the ground of long or immemorial usage.\* A person is said to *prescribe* that he and his ancestors have used, time out of mind, to have common of pasture in such a close, which is called

prescription in a man and his ancestors. 3 *Bl. Com.* 264. Or he is said to *prescribe* that he, and all those whose estate (L. Fr. *que estate*,) he has, have used for such length of time to have common, &c.; which is technically called prescribing in a *que estate*. *Id.* 264, 265.

**PRESCRIPTION.** [from Lat. *præscriptio*, q. v.] A mode of acquiring title to property by long and continued usage.\* A title acquired by use and time to incorporeal hereditaments, such as a right of way, or of common.\* 2 *Bl. Com.* 264. It is a usage annexed to the *person* of the owner of an estate, as distinguished from *custom*, which is properly a local usage. *Id.* 263, 264. As to the American law of prescription, see 2 *Hilliard's Real Prop.* 153—162. *United States Digest*, Prescription.

**PRESCRIPTION, TIME OF.** A length or period of time sufficient to establish the right of prescription, or title by prescription. This, in England, was formerly identical with *time immemorial*, or *time out of memory*, a period referring to the beginning of the reign of Richard I. But now, by the statute of 2 & 3 Will. IV. c. 71, the time of prescription in certain cases has been shortened. 2 *Steph. Com.* 35—39.

**PRESENCE.** [Lat. *præsentia*.] The fact of being in a particular place, considered with relation to some act done in the same place. This is either *actual*, as where the person is within the same enclosure and in actual sight, or *constructive*, as where the person is so near as to be held to be present in contemplation of law.

In criminal law, mere presence at the commission of a crime is not sufficient to constitute a person a principal or even an accessory, unless he aids, assists or abets others. 1 *Hale's P. C.* 439. See 1 *Wiseconsin R.* 159, 166.

As to what is a sufficient presence of witnesses at the execution of a will, see 4 *Kent's Com.* 515, 516, and cases cited *ibid.* 10 *Grattan's R.* 106. 1 *Leigh's R.* 6.

**TO PRESENT.** [L. Lat. *præsentare*.] In English ecclesiastical law. To offer a clerk to the bishop of the diocese, to be instituted. 1 *Bl. Com.* 389.

In criminal law. To find or represent judicially, as a grand jury *present* certain offences. See *Presentment*. Held to be an essential word. 2 *Show.* 454.

**PRESENTATION.** In ecclesiastical law. The act of a patron or proprietor of

a living, in offering a clerk to the ordinary for institution.

**PRESENTMENT.** L. Fr. and Eng. In criminal law. The notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them; as the presentment of a nuisance, a libel and the like, upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it. 4 *Bl. Com.* 301.

In a more general sense, a presentment includes inquisitions of office, and indictments by a grand jury. *Id. ibid.* Thus in indictments, the jury are said to *present* upon their oath. See *Indictment*.

**PRESENTS.** Present letters or instrument. A word of constant occurrence in deeds, bonds, and various other instruments, framed immediately from the Lat. *præsentes*, which was used with *literæ*, as formal words of description in old conveyancing. *Omnibus ad quos præsentes literæ pervenerint, salutem*: To all to whom the present letters shall come, Greeting. The word *literæ* was sometimes suppressed, thus: *Pateat universis per præsentes*; Be it known to all men by the presents. *West's Symbol.* pars 1, lib. 2, sect. 535. *Noverint universi per præsentes*; Know all men by the presents. *Id.* sect. 482. This led to the use of *præsentes* as a substantive, and ultimately to the English word *presents* in its plural form: "Be it known unto all men by these presents." *West's Symbol.* sect. 483. "Know all men by these presents."

Another mode of expression formerly in use was, "To all Christian people to whom this *present writing* shall come," &c. *Id.* sect. 465.

**PRESIDENT.** [Lat. *præsēs*.] In English law. A title formerly given to the king's lieutenant in a province; as the President of Wales. *Cowell*.

**PRESIDENT.** An old though corrupted form of *precedent*, (q. v.) used both as a French and English word. *Le president est rare.* *Dyer*, 136. See *Freem.* 265. Presidents without a judicial examination do not make a law. *Hardr.* 98, arg. See 3 *Leon.* 28. *Vaugh.* 154.

**PRESS.** In old practice. A piece or skin of parchment, several of which used to be sewed together in making up a roll or record of proceedings. See 1 *Bl. Com.* 183. *Towns. Pl.* 486.

**PREST,** (and afterwards **PRIST.**) L. Fr. [from Lat. *paratus*.] In old pleading and practice. Ready. *Prest averrer*; ready to prove. *Yearb.* P. 11 Hen. VI. 8. M. 12 Hen. VI. 13. *Prest de prover.* *Britt.* c. 22. A formal word at the conclusion of pleas and replications, expressive of a tender and acceptance of issue. *Prest*, &c. was a more common form. See *Yearb.* 8 Edw. III. 20. T. 8 Edw. III. 11. See *Prist*, *Culprit*.

*Prest à passer*; ready to pass, that is, to give a verdict. M. 3 Edw. II. 56. See *Passer*.

**PREST.** In old English law. A duty in money to be paid by the sheriff upon his account in the exchequer, or for money left or remaining in his hands. *Cowell*.

**PRESTATION.** [Lat. *præstatio*, from *præstare*, q. v.] In old English law. A payment or performance; the rendering of a service. A toll, custom or duty. See *Præstatio*.

**PRESUMPTION.** [L. Fr. *presumption*, from Lat. *præsumptio*, from *præsumere*, (q. v.) to take before.] In the law of evidence. Literally, a taking beforehand. The taking of a fact to be so, before it certainly appears. *Locke on Hum. Underst.* b. 4, c. 14, s. 4.—The taking of a fact or proposition to be true, before it is positively shown or certainly known to be so. *Burr. Cir. Evid.* 9. A process of reasoning by which a fact not known is deduced or inferred from one or more facts known. *Id. ibid.* Called, by some of the civilians, *argumentum*. A process of probable reasoning from one or more facts to others, exercised by common sense, and founded on the usual course of things; (*argumentum verisimile, communi sensu perceptum ex eo quod plerumque fit aut fieri intelligitur.*) *Matthæus de Crim.* in lib. 48, Dig. tit. 15, c. 6. Best, J. 4 *B. & Ald.* 95, 124. Lord Tenterden, *Id.* 161. Otherwise termed *natural presumption*. See *Præsumptio*.

The result of a process of reasoning from one fact to another, or from one or more facts to others; an inference. A conclusion, judgment or belief, as to the truth of some proposed matter of fact, arrived at and formed by a process of inference from other facts. *Burr. Cir. Evid.* 9, 10, and notes.—An inference as to the existence of a fact not actually known, arising from its necessary or usual connection with others which are known. 1

*Stark. Evid.* 23, 24. See 3 *Id.* 1234.—A probable inference which our common sense draws from circumstances usually occurring in such cases. 1 *Phill. Evid.* 436.—A probable consequence drawn from facts, as to the truth of a fact alleged, but of which there is no direct proof. *Wills' Circ. Evid.* 17.—An inference affirmative or disaffirmative of the existence of a disputed fact, drawn by a judicial tribunal, by a process of probable reasoning, from some one or more matters of fact, either admitted in the cause, or otherwise satisfactorily established. *Best on Presumptions*, 12, § 11. See 1 *Greenl. Evid.* §§ 14—48. See *Præsumptio*.

An assumption or proposition; such as the presumption of sanity. *Burr. Circ. Evid.* 38, 39. A principle or rule; as a presumption of law. *Id. ibid. Vinnius, Jurispr. Contr.* lib. 4, tit. 36.

**PRESUMPTION OF FACT.** [*Lat. præsumptio hominis; præsumptio facti.*] In the law of evidence. The process of inferring one fact from another, or one or more facts not known, from one or more other facts known, by the exercise of the natural faculties of judgment and common sense, without reference to any technical rules. The process of deducing or inferring certain facts proposed and disputed, by reasoning from certain other facts shown; both species of facts being made the subjects of actual inquiry, with the view of ascertaining the truth of their existence in particular cases. *Burr. Circ. Ev.* 51—59. The species of presumption exercised and applied by juries on the trial of issues of fact. *Id.* 53, 54. Otherwise called *præsumptio hominis*, (q. v.)

The result of such a process of reasoning from facts to facts. A presumption or inference derived wholly and directly from the circumstances of the particular case to which it is applied, by means of the common experience of mankind, without the aid or control of any rules of law whatever.\* 1 *Greenl. Evid.* §§ 44, 48.

**PRESUMPTION OF LAW.** [*Lat. præsumptio juris.*] In the law of evidence. An inference or intendment made by law, or the court, from facts appearing or proved in a particular case.\* *Best on Pres.* § 15. 1 *Greenl. Evid.* §§ 15, 33. *Burr. Circ. Evid.* 42, 45.—An assumption or proposition of law, founded on facts proved.\* Otherwise termed *legal presumption*. In legal presumption, there is

no special inference or process of reasoning from fact to fact, as there is in natural presumption. What is called legal presumption is properly *assumption*; a legal presumption is a *proposition* of law, or the application to a certain fact proved, of a rule previously established. 6 *Lond. Law Mag.* 354. *Burr. Circ. Ev.* 43, 50.

**PRESUMPTIVE EVIDENCE.** In the law of evidence. Evidence presenting facts from which a *presumption* may be drawn as to the existence of other facts. See *Presumption*. That species of indirect evidence which, when presented to the mind, in connection with any fact sought to be established, suggests or induces, with more or less force, a presumption or belief as to the truth of such fact. *Burr. Circ. Evid.* 79. A species of circumstantial evidence. *Id.* 7, 76. In all cases of probable reasoning, the proof is said to be *presumptive*, and the inference to which it gives rise, a *presumption*. *Best on Presumptions*, 4, § 3. When the conclusion of the existence of a principal fact does not follow necessarily from the facts proved, but is deduced from them by probable inference, the evidence is said to be *presumptive*, and the inference drawn, a *presumption*. *Id.* 12, § 11. See 1 *Greenl. Evid.* § 13.

Evidence of facts, admitting of explanation or contradiction, as distinguished from *conclusive* evidence. *Burr. Circ. Ev.* 89.

**PRESUMPTIVE HEIR.** A person who, if his ancestor should die immediately, would, in the present circumstances of things, be his heir. See *Heir presumptive*.

**PRETENSED, Pretenced.** [*L. Lat. prætentum.*] In old English law. Pretended; claimed. Where a party out of possession of lands or tenements, claimed or sued for the possession, he was said to have a *pretensed* right and title, (*jus prætentum.*) *Cowell. Dyer*, 74 b.

**PRETIUM, Precium.** *Lat.* Price; value. In the civil law. The price of a thing sold, which properly consisted in counted money; (*pretium in numerata pecunia consistere debet.*) *Inst.* 3. 24. 2. *Pretium constitui oportet, nam nulla emptio sine pretio esse potest*; the price ought to be fixed, for there can be no purchase without a price. *Id. Dig.* 18. 1. 2. 2 *Kent's Com.* 477.

*Pretium succedit in locum rei.* The price

succeeds in place of the thing [sold.] *Calv. Lex.* citing *Gæddæus*. A maxim quoted in the early English books. 2 *Bulstr.* 312.

**PRETIUM AFFECTIONIS.** Lat. The price of affection. A price or value set upon a thing or estate by the owner, exceeding the just value, and growing out of the affection he has for it.\* *Pothier, Contr. of Sale*, num. 244.

**PRETORIUM, Prætorium.** Lat. In Scotch law. A court-house, or hall of justice. 3 *How. St. Trials*, 425.

**PREUE.** L. Fr. Weal; good; welfare. *Art. sup. Chart.* pr.

**P'RIA.** A contraction of *patria*. 1 *Inst. Cler.* 11.

**PRIER.** L. Fr. To pray. *Priours*; we pray. *Yearb. H. 1 Edw. II.* 3.

**PRIMA FACIE.** Lat. On the first face; at the first view. See *Facies*. A phrase derived from the civil law, in which it occurs in precisely its modern sense. *Interdum evenit ut exceptio, quæ primâ facie justa videtur, tamen inique noceat*; it sometimes happens that an exception, which at first view seems just, yet operates as a bar unjustly. *Inst.* 4. 14, pr. See the phrase repeated, *Id.* 4. 14. 1, 2. Bracton uses it in the same sense. *Et quod primâ facie valere debent, videtur*; and it seems that, *primâ facie*, they ought to be valid. *Bract. fol.* 29. *Licet videatur, primâ facie, quod, &c.*; though it seems, *primâ facie*, that, &c. *Id. fol.* 175. *Fleta*, lib. 2, c. 44, § 7. *Id.* c. 60, § 21.

**PRIMA FACIE EVIDENCE.** That kind of evidence which, not being inconsistent with the falsity of an hypothesis, nevertheless raises such a degree of probability in its favor that it must prevail, if it be accredited by the jury, unless it be rebutted, or the contrary proved. 1 *Stark. Evid.* 544, [453.]—Evidence which, if uncontradicted or unexplained, is sufficient to determine the matter at issue. 6 *Lond. Law Mag.* 373.

**PRIMA TONSURA.** Lat. In old English law. The first mowing; the first crop of grass. *Cro. Car.* 362. *Roscoe's Real Act.* 486. Called "fore-crop." 7 *East*, 200. A grant of a right to have the first crop of grass. 1 *Chitt. Gen. Pr.* 181.

**PRIMÆ IMPRESSIONIS.** L. Lat. Of the first impression; without precedent. *Freem.* 87, arg. A term applied to a new

case, or one which has not occurred before; or to a question which is raised for the first time. *Com.* 224, arg. *Eyre*, J. 5 *Mod.* 23. 1 *Vern.* 94. *Platt*, J. 19 *Johns. R.* 310. "The question here, as there, is *primæ impressionis*; the case here, as there, is the first of its kind." *Story*, J. 3 *Mason's R.* 116, 125. The expression is applied to actions, returns, motions and other proceedings. *Freem.* 431. *Holt*, C. J. 5 *Mod.* 21. *Mansfield*, C. J. 4 *Taunt.* 3. 1 *Id.* 492, arg. The Gunpowder Plot was called by Lord Coke, in his argument as attorney-general in the case, an offence *primæ impressionis*. 2 *How. State Trials*, 167.

**PRIMÆ (or PRIMARIÆ) PRECES.** Lat. In the civil law. An imperial prerogative, by which the emperor exercised the right of naming to the first prebend that became vacant after his accession, in every church of the empire. *Goldast. Constit. Imper.* tom. 3, p. 406. 1 *Bl. Com.* 381.

**PRIMAGE.** In mercantile law. A small allowance or compensation paid by the shipper or consignor of goods, to the master of the vessel, over and above the freight, for his care and trouble as to the goods. 3 *Ken's Com.* 232, note. It is a customary payment, and is expressed in bills of lading as "*primage and average accustomed.*"

**PRIMATE.** [from Lat. *primus*, first.] In English law. A chief ecclesiastic; a prelate of supreme dignity and authority; the title of an archbishop. The Archbishop of Canterbury is styled "Primate of all England, and Metropolitan;" (*Metropolitanus et Primus totius Angliæ.*) The Archbishop of York is styled "Primate of England, and Metropolitan;" (*Primus et Metropolitanus Angliæ.*) 1 *Chitt. Bl. Com.* 380, note.

**PRIMARY CONVEYANCES.** Those common law conveyances, (otherwise termed *original*,) by means of which an estate is created or first arises. 2 *Bl. Com.* 309. They include feoffments, gifts, grants, leases, exchanges and partitions. *Id.* 310.

**PRIME.** Fr. [from Lat. *premium*, reward, or *primo*, first.] In French law. The price of the risk assumed by an insurer; premium of insurance. *Emerig. Tr. des Ass.* ch. 3, sect. 1, §§ 1, 2.

**PRIMER.** L. Fr. First. See *infra*. *Primerement*; in the first place. *Kelham*.

**PRIMER FINE.** In old English prac-

tice. A fine or payment which was due to the king on suing out the writ of *præcipe*, at the commencement of the proceedings to levy a fine of lands. 2 *Bl. Com.* 350.

**PRIMER SEISIN.** [L. Lat. *prima seisin*.] In old English law. A right which the king had, when any of his tenants *in capite* died seised of a knight's fee, to receive of the heir (provided he were of full age,) one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion expectant on an estate for life. 2 *Bl. Com.* 66. It was a feudal burthen, only incident to the king's tenants *in capite*. *Id. ibid.*

**PRIMITIÆ.** Lat. In English law. First fruits; the first year's whole profits of a spiritual preferment. 1 *Bl. Com.* 284. *Crabb's Hist.* 252.

**PRIMOGENITURE.** [from Lat. *primogenitura*, from *primogenitus*, first born, q. v.] In English law. The privilege of the first-born or eldest son. The right of the eldest son to inherit his ancestor's estate, in exclusion of younger sons. 2 *Bl. Com.* 214. 1 *Steph. Com.* 369. See 4 *Kent's Com.* 375, note.

**PRIMOGENITUS.** Lat. [from *primo*, first, and *genitus*, born or begotten.] In old English law. A first born or eldest son. *Bract.* fol. 33.

**PRIMUM DECRETUM.** Lat. In the canon law. The first decree; a preliminary decree granted on the non-appearance of a defendant, by which the plaintiff was put in possession of his goods, or of the thing itself which was demanded. *Gilb. For. Rom.* 32, 33. The term is also used in admiralty law. The Exeter, 1 *Rob. Adm. R.* 175.

**PRIMUS.** Lat. First. A fictitious name used, with *Secundus*, *Tertius*, *Quartus*, &c. by Roman jurists, in their illustrations; like the modern A. B. C. &c. *Dig.* 37. 11. 2. 5.

**PRINCEPS.** Lat. In the civil law. The prince; the emperor. *Quod principi placuit, legis habet vigorem*; the emperor's pleasure has the force of law. *Inst.* 1. 2. 6.

**Princeps legibus solutus est.** The emperor is released from the laws; is not bound by the laws. *Dig.* 1. 3. 31. See an explanation of this rule. *Hallifax, Anal.* pref. vii. note.

**PRINCEPS.** Lat. In old English law. The king. *Fleta*, lib. 1, c. 38, § 26. Prin-

ceps et respublica ex justa causa possunt remeam auferre. The king and the state [the government,] may take my property for just cause. 12 *Co.* 13. Translated in Branch's *Principia* to mean the very reverse.

**PRINCIPAL.** L. Fr. [from Lat. *principalis*, from *princeps*, chief.] Head; chief; principal. *Les principals fesours*; the principal or chief actors. *Britt.* c. 5. *Le principal.* *Id.* c. 23. *Le principal dettour*; the principal debtor. *Id.* c. 28.

**PRINCIPAL.** [Lat. *principalis*, q. v.] In criminal law. A chief actor or perpetrator, as distinguished from an *accessory*. A principal in the first degree is he that is the actor or absolute perpetrator of the crime; and, in the second degree, he who is present, aiding and abetting the fact to be done. 4 *Bl. Com.* 34. See *Wharton's Am. Crim. Law*, §§ 112, 116.

In the law of contracts. A chief debtor; one who is liable in the first instance, as distinguished from a *surety* who is liable for him, in case of his default; or one whose obligation is prior to that of another which is founded on it. In this and the foregoing sense, the word is directly taken from the French, in which both forms of expression, *le principal fesour*, and *le principal dettour*, are used in their modern sense. See *infra*.

A chief or head; one who orders or instructs another; one who appoints, directs or employs another to act for him, as distinguished from an *agent*, or person appointed by him. Otherwise termed a constituent or employer. The word, in this sense, has the meaning of *dominus* in the civil law. *Story on Agency*, § 3. See *United States Digest*, Principal and Agent.

**PRINCIPAL.** [L. Lat. *principalium*.] In old English law. An heir-loom. *Cowell*.

**PRINCIPAL CHALLENGE.** In practice. A challenge of a juror for a cause which carries with it, *primâ facie*, evident marks of suspicion either of malice or favor; as that a juror is of kin to either party within the ninth degree; that he has an interest in the cause, &c. 3 *Bl. Com.* 363.

**PRINCIPAL FACT.** In the law of evidence. A fact sought and proposed to be proved by evidence of other facts (termed evidentiary facts) from which it is to be deduced by inference. Otherwise termed *factum probandum*. 3 *Benth. Jud. Evid.*

3. *Burr. Circ. Evid.* 3, 119. A fact which is the principal and ultimate object of an inquiry, and respecting the existence of which a definite belief is required to be formed. *Id.* 3.

**PRINCIPALIS.** Lat. [from *princeps*, first or chief.] In civil and old English law. Principal; a principal debtor. *Principalis debitor.* *Fleta*, lib. 2, c. 63, § 5. Called *capitalis debitor*, (chief debtor.) *Id.* § 6. *Principalis debet semper executi antequam perveniat ad fidei-jussores.* The principal ought always to be discussed, before resort is had to the sureties. 2 *Inst.* 19. See *Discussion*. A rule of the civil law, the meaning of which is not apprehended in Branch's *Principia*.

A principal or chief criminal, as distinguished from an accessory. Otherwise called *persona principalis.* *Fleta*, lib. 1, c. 27, § 19.

Principal; chief. *Placitum principale*; a chief or principal plea or suit. Otherwise called *loquela principalis.* *Fleta*, lib. 6, c. 23, §§ 12, 13.

**PRINCIPIA.** Lat. [plur. of *principium*, q. v.] Principles; maxims; axioms; fundamental rules; elements; beginnings. *Principia probant, non probantur.* Principles prove; they are not proved. 3 *Co.* 50 a, *Ratcliff's case*. Fundamental principles require no proof; or, in Lord Coke's words, "they ought to be approved, because they cannot be proved." *Id. ibid.*

*Principiis obsta.* Withstand beginnings; oppose a thing in its early stages, if you would do so with success. This is put down by Branch among legal maxims, but is most absurdly translated, "Oppose principles," and the error is literally copied in Wharton's *Lexicon*.

*Principiorum non est ratio.* There is no reasoning of principles; no argument is required to prove fundamental rules. 2 *Bulstr.* 239.

**PRINCIPIUM.** Lat. [from *princeps*, first.] In civil and old English law. A beginning. *In principio donationis*; at the commencement of the gift. *Bract.* fol. 17 b. *Cujusque rei potissima pars principium est.* The chiefest or most essential part of any thing is the beginning or origin. *Dig.* 1. 2. 1. Adopted by Lord Coke. 10 *Co.* 49 a, *Lampet's case.* *Co. Litt.* 248 b.

A principle; a maxim. Analyzed by Lord Coke in his peculiar manner, to be quasi *primum caput*, (the first head) from

which many cases have their original or beginning. *Co. Litt.* 303 a.

**Prior tempore potior jure.** [He who is] before in time, is preferred in right. The first occupant of *bona vacantia* has the best right. *Broom's Max.* 330. A creditor who first issues execution to a sheriff, is entitled to have his writ first executed. *Id.* 334.

**PRINCIPLE.** A fundamental truth; an original cause; a motive. McLean, J. 14 *Howard's R.* 175. In patent law, a principle is not patentable. *Id. ibid.* Eyre, C. J. 2 *H. Bl.* 495. But see *Id. ibid.* 1 *Mason's R.* 470. 1 *Gallison's R.* 478. Nelson, J. (dissenting,) 14 *Howard's R.* 183, *et seq.* According to Mr. Justice Story, the *principle* of a machine means the *modus operandi*, or that which applies, modifies or combines mechanical powers to produce a certain result; and, so far, a principle, if new in its application to a useful purpose, may be patentable. See 1 *Mason's R.* 470.

**P'RIIS.** A contraction of *patris.* 1 *Inst. Cler.* 11.

**PRIS, Prise.** L. Fr. Taken. *Si soit pris et encoupe*; he shall be taken and charged. *Britt.* c. 11.

Imprisoned. *Rot. Parl.* 4 Hen. IV.

**PRISA.** L. Lat. [from Fr. *prise*, q. v.] In old English and Scotch law. A taking; a seizure of goods. *Spelman.* *De pris* *factis per vicecomites*; of takings made by sheriffs. *Fleta*, lib. 1, c. 20, § 32. See *Id.* lib. 2, c. 50, § 21. *Skene de Verb. Signif.* See *Prise*.

**PRISAGE.** L. Fr. and Eng. [from Fr. *prise*, a taking, q. v.] In old English law. A right on the part of the crown of *taking* two tuns of wine from every ship (English or foreign) importing into England twenty tuns or more, one before and one behind the mast; which, by charter of Edward I. was exchanged into a duty of 2s. for every tun imported by merchant strangers, and called *butlerage*, because paid to the king's butler. 1 *Bl. Com.* 314, 315. *Hale's Anal.* sect. viii. See *Hale de Jur. Mar.* pars 3, c. 2. *Id.* pars 2, c. 6. And see *Calthrop's R.* 1, 2, 20, 23, 24.

**PRISARE.** L. Lat. In old European law. To take. *Decret. Chlot.* § 7. *Spelman.*

**PRISE.** L. Fr. [from *prendre*, to take.] A taking. *De prises del avers*; of the takings of beasts. *Britt.* c. 27. *La torcenouse prise et la torcenouse detenue*; the

tortious taking and the tortious detention. *Id. ibid.*

PRIZE. Fr. In French law. Prize; captured property. *Ord. Mar.* liv. 3, tit. 9. See *Prize*.

Capture, by a naval force. *Emerig. Tr. des Ass.* ch. 12, sect. 18, § 1.

PRIZE. [L. Fr. *prise*; L. Lat. *prisa*, qq. v.] In old English law. Things taken of the king's subjects by purveyors; provisions taken for the king's use. *Cowell. Artic. sup. Chart.* c. 2. 2 *Reeves' Hist. Eng. Law*, 233. *Fleta*, lib. 2, c. 50, § 21.

PRISEL. L. Fr. A taking. *Le prisel del verdict.* *Dyer*, 55 b, (Fr. ed.)

PRISEL EN AUTER LIEU. L. Fr. A taking in another place. A plea in abatement in the action of replevin. 2 *Ld. Raym.* 1016, 1017.

PRISO. L. Lat. [L. Fr. *prison*, from *prise*, taken.] In old English law. A prisoner; a captive in war. *Spelman*.

A prisoner, or imprisoned malefactor. *Prisones vero, sic imprisonati*; but prisoners so imprisoned. *Bract.* fol. 123. See *Fleta*, lib. 1, c. 26, § 5.

PRISON. L. Fr. [from *prise*, a taking.] In old English law. A prison; a place where persons taken for crimes are confined. *Si ascun home moerge en prison, si volons nous que le coroner voet veyer le cors*; if any man die in prison, we will that the coroner go to view the body. *Britt.* c. 11.

Imprisonment. *Punys par prison et par fyn*; punished by imprisonment and by fine. *Id.* c. 20. Prison *forte et dure*; strong and hard imprisonment. *Stat. Westm.* 1, c. 12.

Confinement of the person, as by duress. *Par seffements faits à force en prison*; by seoffments made by compulsion in confinement. *Britt.* c. 114.

A prisoner. (Lat. *priso*.) More commonly written, in this sense, *prisoun*, or *prison*. *Britt.* c. 11.

PRISON. [from L. Fr. *prison*, from *prise*, a taking; L. Lat. *prisona*; Lat. *carcer*, qq. v.] A place of confinement of persons, either for safe keeping, or by way of punishment. A public building devoted to such purposes.

A place for the detention of debtors; more correctly expressed by the word *gaol*, (q. v.)

In criminal law. A place for the detention of persons charged with offences, and

committed for trial. 2 *N. Y. Rev. St.* [754,] 632, § 1.

A place for the confinement of persons sentenced to imprisonment, upon conviction for any offence. *Id. ibid.* A place of punishment for crime.

\* \* This word is purely French, occurring in precisely its present form in Britton, whose eleventh chapter is entitled "*De Prisons*." Bracton makes use of both the L. Lat. *prisona* and the pure Lat. *carcer*, to express it. See *Prisona*. *Prison* and *gaol* are frequently used as synonymous in modern law, though in strictness *prison* properly signifies a place of punishment for crime; *gaol*, a place of safe keeping and detention. It is said, however, that *prison* originally signified merely a place of safe keeping, and not of punishment, and to show this, reference is made to the observation of Lord Coke,—*carcer ad homines custodiendos non ad puniendos dari debet*, (a prison ought to be assigned for the custody of men, not for their punishment.) *Co. Litt.* 260. Lord Coke, however, merely quoted from Bracton, with a slight alteration; the passage in the latter author running thus: *carcer ad continendos et non puniendos haberi debeat.* *Bract.* fol. 105. A reference to the context in Bracton will show that the meaning of these words has been altogether misapprehended. In the first place, the chapter in which they are found is devoted to the subject of *punishments*, being entitled, "*De generibus pœnarum quibus homines afficiuntur propter eorum iniquitates*;" (of the kinds of punishments with which men are visited on account of their iniquities.) *Bract.* lib. 2, tract. 1, c. 6. Under this head of *punishments*, Bracton proceeds to enumerate, with others, *corporis coercionem, scilicet imprisonamentum, vel ad tempus, vel imperpetuum*, (coercion or restraint of the body, to wit, imprisonment, either for a time, or perpetually, i. e. for life.) He then remarks that a person should be punished in no other way than according to his sentence, (*non alio modo puniatur quis quam secundum quod se habeat condemnatio*.) He states, however, that the keepers of prisons were in the habit of ordering those who were sentenced to imprisonment to be kept in chains; (*solent præsidēs in carcere continendos damnare ut in vinculis contineantur*;) but remarks that severities of this kind were condemned by law, because a prison ought to be kept (i. e. by those

having charge of it) as a place of custody and not of punishment; (*sed hujusmodi interdicta sunt à lege, quia carcer ad continendos et non puniendos haberi debeat.*) *Bract.* fol. 104 b, 105. The whole drift of the chapter is to show that punishments should not be extended beyond their proper limits, and particularly, that where imprisonment was inflicted as a punishment, it should be attended with no unnecessary severities. This explanation clearly leads to the conclusion that a prison was, in Bracton's time, a place of punishment, as is directly shown, indeed, by other expressions of the same author; (sc. *pœna carceris*; the punishment of the prison,) and by the very common expression of Britton, *punys par prison et par fyn*. Fleta speaks of the cruelties inflicted upon prisoners in aggravation of their punishment, such as hanging up by the feet, loading with iron, &c. in terms of condemnation. *Fleta*, lib. 1, c. 26, §§ 4, 5. And see the whole chapter.

**PRISONA.** L. Lat. [from L. Fr. *prison*, q. v.] In old English law. Prison; a prison; a place of confinement. *Captus et in prisona detentus*; taken and detained in prison. *Bract.* fol. 17, 123. *Jaceat in prisona nostra per unum annum et unum diem*; he shall lie in our prison for a year and a day. *Cart. de For.* c. 10. See *Fleta*, lib. 1, c. 26, *De prisonis*.

A place of punishment for crime. *Pœna imprisonamenti.* *Bract.* fol. 104 b. See *Prison*. Bracton uses the three words *prisona*, *carcer* and *gaola*, to denote a place of confinement or imprisonment. Of these, *carcer* (*prison*) seems to signify any place or building devoted to the express purpose of confining persons, either on accusations of crime or after sentence of imprisonment. *Bract.* fol. 105, 123. *Gaola* (*gaol*) has the narrower sense of a building devoted to the confinement of persons charged with crimes. *Id.* fol. 109, 110. *Prisona* (*prison*), on the other hand, has a much broader meaning than *carcer*, importing not only a common place of confinement, but any place of confinement, such as a private house, where a person is restrained of his liberty, or a state of duress without reference to the place of it. *Id.* fol. 16 b, 122 b, 123 b.

Imprisonment. *Puniatur per prisonam unius anni*; he shall be punished by imprisonment for one year. *Fleta*, lib. 1, c. 24, § 2.

**PRISONER.** [L. Fr. *prisoner*, *prisoun*; L. Lat. *priso*.] A person restrained of his liberty upon any action, civil or criminal, or upon commandment. *Cowell*.

A person who has not his liberty freely to go at all times, to all places, whither he will, without bail or mainprise; whether he be detained in the open field, or in the street, or in his own house, as well as in the common gaol.\* *Termes de la Ley*, voc. *Imprisonment*.

A person confined in a prison, either upon a criminal charge, or on a conviction and sentence. See *Prison*.

A person on trial for crime. "The prisoner at the bar." The jurors are told to "look upon the prisoner." The court, after passing sentence, gives orders to "remove the prisoner."

**PRIST.** L. Fr. Ready. A formal word used in the days of oral pleading, to express a tender of or joinder in issue. *Sa comen, prist, &c.* *Son several, prist, &c.* Her common, ready, &c. His several, ready, &c. *Yearb. H.* 6 Edw. III. 10. *Ne unques seisi, prist, &c.* *Seisi, prist, &c.* Never seised, ready, &c. Seised, ready, &c. *P.* 6 Edw. III. 68. *Car nostre baron morust seisi, Prist, &c.* *Ald.* *Vostre baron ne morust point seisi, Prist, &c.* *Ash. Quod sic. Prist, &c.* For our husband died seised; Ready, &c. *Ald.* Your husband did not die seised; Ready, &c. *Ash.* It was so; Ready, &c. *P.* 8 Edw. III. 4.

**PRIVATE ACT.** An act which only operates upon particular persons and private concerns. 1 *Bl. Com.* 86. See *Private statute*.

**PRIVATE CORPORATION.** A corporation founded by a private individual, or the stock of which is owned by private persons, such as a hospital or college, a bank, an insurance, turnpike or rail-road company.\* 2 *Kent's Com.* 275.

**PRIVATE NUISANCE.** Any thing done to the hurt or annoyance of the lands, tenements or hereditaments of another. *Finch's Law*, 188. 3 *Bl. Com.* 216. 2 *Crabb's Real Prop.* 1067; § 2461.

**PRIVATE RIGHTS.** Those rights which appertain to a particular individual or individuals, and relate either to the person, or to personal or real property. 1 *Chitt. Gen. Pr.* 3.

**PRIVATE PROPERTY,** (as protected from being taken for public uses,) is such property as belongs absolutely to an indi-

vidual, and of which he has the exclusive right of disposition; property of a specific, fixed and tangible nature, capable of being had in possession and transmitted to another, such as houses, lands and chattels. 29 *Mississippi R.* 21, 32.

**PRIVATE STATUTE (or ACT.)** A statute which operates only upon particular persons, and private concerns. 1 *Bl. Com.* 86.—An act which relates to certain individuals, or to particular classes of men. *Dwarris on Statutes*, 629.—A statute which concerns only a particular species; a particular thing, or a particular person. 4 *Co.* 76 a. 1 *Term R.* 125. A statute which relates to a particular place or town. 4 *Co.* 76 b. *Skin.* 350. And see *Hale's Hist. Com. Law*, (Runnington's ed.) 3. Generally speaking, statutes are public, and a private statute may rather be considered as an exception to a general rule. It operates upon a particular thing or private persons. 1 *Kent's Com.* 459.

**PRIVATE WAY.** A right which a person has of passing over the land of another. See *Way*.

**PRIVATE WRONGS, (otherwise termed CIVIL INJURIES.)** The violation of public or private rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation. 3 *Steph. Com.* 356.

**PRIVATEER.** In international law. A private armed vessel, duly commissioned by government to cruise during war against the commerce of the enemy. 1 *Kent's Com.* 95—100.

**PRIVATUM.** Lat. Private; privy. *Privatum jus*; private law. *Inst.* 1. 1. 4. *Privatum concilium*; privy council. *Hale's Anal.* sect. iii.

**Privatum commodum publico cedit.** Private good yields to public. *Jenk. Cent.* 223, case 80. The interest of an individual should give place to the public good. *Id. ibid.*

**Privatum incommodum publico bono pensatur.** Private inconvenience is made up for by public benefit. *Jenk. Cent.* 85, case 65. *Broom's Max.* 3, [5.]

**Privatis pactionibus non dubium est non lædi jus cæterorum.** There is no doubt that the rights of others [third parties] cannot be prejudiced by private agreements. *Dig.* 2. 15. 3, pr. *Broom's Max.* [545.]

**PRIVATUS.** Lat. A private person or individual.

**Privatorum conventio juri publico non derogat.** An agreement of private individuals does [can] not derogate from public or common right, [or cannot impair or affect a common right.] *Dig.* 50. 17. 45. 1. *Broom's Max.* [543.] Quoted by Lord Coke, in the words, *Conventio privatorum non potest publico juri derogare.* *Co. Litt.* 166 a. And *Pacta privata non derogant juri communi.* 7 *Co.* 23 b, *Butt's case*.

**PRIVEMENT.** L. Fr. Privately; privily; secretly; not visibly. *Aperment ou privement*; openly or privily. *Mem. in Scacc.* 18 Edw. I. *Privement enceint*; secretly pregnant; not known or observed to be so. See *Grossement.* *Finch's Law*, lib. 2, c. 3, p. 117.

**PRIVIES.** Persons connected together by some relation other than that of actual contract between them; persons whose interest in an estate is derived from the contract or conveyance of others. *Privies* are properly always distinguished from *parties*, from whom they derive their title, though sometimes made to include them. See *Privy, Privity*.

**PRIVIGNUS.** Lat. In the civil law. A son of a husband or wife by a former marriage; a step-son. *Dig.* 38. 10. 4. 6. *Calv. Lex. Cooper's Justin. Inst. Notes*, \*429.

**Privigna.** A step-daughter. *Dig. ub. sup. Brissonius.*

**PRIVILEGE.** [from Lat. *privilegium*, q. v.] An exemption or immunity from some general duty or burden; a right peculiar to some individual or body. According to its etymology,—a law, or provision or exception of law in favor of an individual, (*quasi priva*, or *privata lex*.) A peculiar right or favor granted by law, contrary to the common rule. See 14 *Texas R.* 115. See *Privilegium*.

**PRIVILEGE FROM ARREST.** In practice. A privilege from arrest on civil process, enjoyed either *permanently*, as by ambassadors, public ministers, and their servants, married women, &c.; or *temporarily*, as by members of Congress and of State legislatures, during their attendance at the session of their respective houses, and in going to and returning from the same; attorneys, solicitors and counsellors, during their actual and necessary attendance on their respective courts; parties to a suit and witnesses, while going to, attending and returning from court, and other persons

designated by law. See 1 *Burr. Pr.* 89—92.

### PRIVILEGED COMMUNICATION.

In the law of evidence. A communication made to a counsel, solicitor or attorney, in professional confidence, and which he is not permitted to divulge; otherwise called a *confidential* communication. 1 *Stark. Evid.* 185. 2 *Id.* 320.

In the law of libel. A communication, statement or publication made by a person affecting the character of another, but which is *privileged* or protected by the occasion or circumstances under which it is made, and will not support an action without proof of express malice.\* 3 *Howard's R.* 266.

**PRIVILEGED COPYHOLDS.** In English law. Those copyhold estates which are said to be held according to the custom of the manor, and not *at the will of the lord*, as common copyholds are. They include customary freeholds and ancient demesnes. 1 *Crabb's Real Prop.* 709, § 919. See *Privileged villenage*.

**PRIVILEGED DEBTS.** Debts to which a preference in payment is given out of the estate of a deceased person, or out of the assets of an insolvent.

**PRIVILEGED DEED.** In Scotch conveyancing. A deed or instrument in the execution of which, certain solemnities or formalities are dispensed with; such as the attestation of witnesses, &c. *Bell's Dict.*

**PRIVILEGED VILLENAGE.** In old English law. A species of villenage mentioned by Bracton, in which the tenants held by certain and determinate services; otherwise called *villain-socage*. *Bract.* fol. 209. Now called privileged copyhold, including the tenure in ancient demesne. 2 *Bl. Com.* 99, 100. See *Privileged copyholds*.

**PRIVILEGIUM.** Lat. [from *privus*, particular, and *lex*, law.] In the Roman law. A private law; properly, a special law of the kind called *constitutio*, ordained by the emperor. A special constitution, either conferring a reward on an individual for some act of merit, or inflicting an extraordinary punishment; but which was not to serve as a precedent. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, §§ 59, 60. *Inst.* 1. 2. 6. Called, also, *jus singulare*, (a particular law,) *beneficium*, (a benefit or favor,) *constitutio personalis*, (a personal law.) *Calv. Lex.* But the civilians usually made a distinction between these

terms. *Heinecc. Elem. Jur. Civ. ub. sup.* And see *Tayl. Civ. Law*, 234, 235.

An *ex post facto* law. See 1 *Bl. Com.* 46, note (c.)

In modern civil law, *privilegium* (privilege) is said to denote, in its general sense, every peculiar right or favor granted by the law, contrary to the common rule. 1 *Mackeld. Civ. Law*, 182, § 189.

**PRIVILEGIUM.** Lat. In old English law. A privilege. *Privilegium est beneficium personale, et extinguitur cum persona.* A privilege is a personal benefit or favor, and is extinguished with the person. 3 *Bulstr.* 8.

*Privilegium non valet contra rempublicam.* Privilege is of no force against the commonwealth. Even necessity does not excuse, where the act to be done is against the commonwealth. *Bacon's Max.* 32, in reg. 5. *Broom's Max.* [14.]

**PRIVILEGIUM CLERICALE.** L. Lat. In old English law. The clerical privilege; benefit of clergy. *Clericus privilegium allegans clericale*; a clerk alleging his clerical privilege. *Flota*, lib. 1, c. 28, § 12. And see *Id.* lib. 2, c. 69, § 1. See *Benefit of clergy*. *Privilegium* was used indifferently with *beneficium*, in the civil law.

**PRIVITY.** [L. Fr. *privitie*.] Connection; interest; mutuality of interest; such as subsists between the immediate parties to a contract, as between lessor and lessee; otherwise called personal privity, or privity of contract. 3 *Co.* 23 a, *Walker's case*. *Litt.* sect. 460, 461. But this does not seem to be privity in its proper sense, for privies are they who are not parties. See *Privy*.

A derivative kind of interest, founded upon, or growing out of the contract of another, as that which subsists between an heir and his ancestor, between an executor and testator, and between a lessor or lessee and his assignee.\* 3 *Co.* 23 a, *Walker's case*.

Privity is divided into various kinds, in the books; but with little uniformity of arrangement, or clearness of expression. See *Co. Litt.* 271. 8 *Co.* 42 b. *Whittingham's case*. *Plowd.* 363.

**PRIVY.** A person who has an interest in an estate created by another; a person having an interest derived from a contract or conveyance to which he is not himself a party. Thus, an heir is privy to the conveyance of his ancestor, an executor to the contract of his testator, and an as-

signee of a lessor or lessee to the contract of the original parties. Privies are clearly distinguished from parties, in the proper sense of the terms.\* "He is a privy who is not a party." *Plowd.* 363.

**PRIVY COUNCIL.** In English law. The principal council of the sovereign, composed of the cabinet ministers, and other persons chosen by the king or queen as privy councillors. Called, by way of eminence, *the council*. 1 *Bl. Com.* 229. 2 *Steph. Com.* 479, 480. The judicial committee of the privy council acts as a court of ultimate appeal in various cases. *Id.* 482. 3 *Id.* 425, 432.

**PRIVY SEAL.** In English law. A seal used in making out grants or letters patent, preparatory to their passing under the great seal. 2 *Bl. Com.* 347.

**PRIVY SIGNET.** In English law. The signet or seal which is first used in making out grants and letters patent, and which is always in the custody of the principal secretary of state. 2 *Bl. Com.* 347.

**PRIVY VERDICT.** In practice. A verdict given privily to the judge out of court, but which was of no force unless afterwards affirmed by a public verdict given openly in court. 3 *Bl. Com.* 377. Now disused.

**PRIZE.** [from L. Fr. *prise*, taken.] In international law. A captured vessel; a vessel and cargo captured by a public or private armed vessel of a belligerent, exercising the right of war.\* 1 *Kent's Com.* 100, 101, *et seq.*

Captured property regularly condemned by the sentence of a competent prize court. *Id.* 102.

**PRIZE COURTS.** Courts to which prizes taken in time of war are brought for adjudication and condemnation, and the sentence of which is necessary to invest a capture with the character of prize. 1 *Kent's Com.* 101—103.

In England, the prize courts constitute branches of the admiralty courts, distinct from the ordinary instance courts. *Id.* 353, 354. In the United States, the district courts act as the prize courts of the country. *Id.* 356—360.

**PRO.** Lat. For; in consideration of. *Pro consilio impendendo*, (q. v.)

For; on account of. *Pro falso clamore*, (q. v.)

For; in behalf of. *Pro querente*; for the plaintiff.

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For; to the extent of. *Pro posse suo*, (q. v.)

For; in lieu of. *Pro omni servitio*, (q. v.)

For; in payment of. *Pro misis*, (q. v.)

For; according to. *Pro re nata*, (q. v.)

For; as. *Pro confesso*, (q. v.)

For; during. *Pro et durante*, (q. v.)

**PRO.** L. Lat. For. A word formerly used in deeds, expressive of a condition in certain cases. *Co. Litt.* 204 a. Pratt, C. J. 1 *Str.* 571. 8 *Mod.* 42.

**PRO CONFESSO.** L. Lat. For confessed; as confessed. A term applied to a bill in equity, and the decree founded upon it, where no answer is made to it by the defendant. 1 *Barbour's Ch. Pr.* 96.

**PRO CONSILIO IMPENDENDO.** L. Lat. For counsel or advice to be given. *Dyer*, 1 b, 2 a. *Cro. Jac.* 482. Formerly a very common consideration for the grant of an annuity.

**PRO CONSILIO IMPENSO.** L. Lat. For counsel given. *Dyer*, 65 a. *Pro consilio suo, et auxilio, et labore in negotiis suis agendis* impens' et impendend'; for his counsel, and aid and labor bestowed and to be bestowed in doing his business. *Yearb.* T. 10 Edw. III. 23.

**PRO CONVICTO.** L. Lat. As convicted. *Fleta*, lib. 2, c. 61, § 6.

**PRO CORPORE REGNI.** L. Lat. In behalf of the body of the realm. *Hale's Hist. Com. Law*, 32, (Runnington's ed.)

**PRO DEFECTU EXITUS.** L. Lat. For, or in case of default of issue. 2 *Salk.* 620. *Pro defectu hæredum*; in case of failure of heirs. *Fleta*, lib. 3, c. 12, § 1.

**PRO DEFECTU JUSTITIÆ.** L. Lat. For defect or want of justice. *Fleta*, lib. 2, c. 62, § 2.

**PRO DEFENDENTE.** L. Lat. For the defendant. *Vaugh.* 65. Commonly abbreviated, *pro def.* *Hardr.* passim. "Morton, *pro querent.* Blackstone, *pro def.*" 1 *W. Bl.* 532.

**PRO DERELICTO.** Lat. As derelict or abandoned. A species of usucapion in the civil law. The title of *Dig.* 41. 7. *Quod pro derelicto habitum est*; what is held as derelict. *Id.* 41. 7. 4.

**PRO DIGNITATE REGALI.** L. Lat. In consideration of the royal dignity. 1 *Bl. Com.* 223.

**PRO DIVISO.** Lat. As divided; in severalty. *Si teneant pro diviso, et quilibet sciat partem suam*; if they hold in several, and each one knows his share.

*Bract.* fol. 276, 385. *Fleta*, lib. 5, c. 6, § 36. A term of the civil law.

PRO DOMINO. Lat. As master or owner; in the character of master. *Calv. Lex.*

PRO DONATO. As a gift; as in case of gift; by title of gift. A species of usucapion in the civil law. The title of *Dig.* 41. 6. See *Id.* 5. 3. 13. 1.

PRO DOTE. Lat. As a dowry; by title of dowry. A species of usucapion. The title of *Dig.* 41. 9. See *Id.* 5. 3. 13. 1.

PRO EMTORE. Lat. As a purchaser; by the title of a purchaser. A species of usucapion. The title of *Dig.* 41. 4. See *Id.* 5. 3. 13. 1.

PRO EO QUOD CUM. L. Lat. For that whereas, (for this, that whereas.) Formal words used in the old Latin declarations. 1 *Inst. Cler.* 207.

PRO ET DURANTE. L. Lat. For and during. 2 *Salk.* 620.

PRO FALSO CLAMORE. L. Lat. For his false claim, or clamour. 3 *Bl. Com.* 296.

PRO FORMA. Lat. As a matter of form. 3 *East*, 232. 2 *Kent's Com.* 245.

PRO HAC VICE. L. Lat. For this turn. 3 *Bl. Com.* 243.

PRO HEREDE. Lat. As heir. *Dig.* 41. 5.

PRO HOMAGIO. L. Lat. For homage; in consideration of homage. *Fleta*, lib. 3, c. 14, § 5.

PRO ILLA VICE. L. Lat. For that turn. 3 *Wils.* 233, arg.

PRO INDEFENSO. L. Lat. As undefended; as making no defence. A phrase in old practice. *Fleta*, lib. 1, c. 41, § 7. *Id.* lib. 6, c. 39, § 2.

PRO INDIVISO. Lat. As undivided; in common. *Si teneant simul et pro indiviso*; if they hold together and in common. *Bract.* fol. 276. *Id.* fol. 9. *Litt.* sect. 292, 310. A term of the civil law. *Pro indiviso vel pro diviso.* *Fleta*, lib. 5, c. 6, § 36.

PRO INTERESSE SUO. L. Lat. According to his interest; to the extent of his interest. *Shep. Touch.* (by Preston,) 35.

PRO LÆSIONE FIDEL. L. Lat. For breach of faith. 3 *Bl. Com.* 52.

PRO LEGATO. Lat. As a legacy; by the title of a legacy. A species of usucapion. The title of *Dig.* 41. 8.

PRO LUCRARI. L. Lat. For to gain. *Fleta*, lib. 6, c. 7, § 12.

PRO MAJORI CAUTELA. Lat. For greater security. 2 *Show.* 420.

PRO MISIS ET CUSTAGIIS. L. Lat. For (his) costs and charges. *T. Raym.* 20. *Cro. Car.* 413.

PRO NON SCRIPTO. Lat. As not written; as though it had not been written; as never written. *Ambl.* 139. *Pro non scriptis*; as void. 7 *Wils. & Shaw's R.* 523.

PRO OMNI SERVITIO. L. Lat. In lieu of all service. *Reg. Orig.* 1.

PRO OPERE ET LABORE. L. Lat. For work and labor. *Com.* 18.

PRO PARTE. L. Lat. In part. *Nec pro parte liber, nec pro parte servus*; not partly free, and partly a slave. *Bract.* fol. 25.

PRO PERDERE. L. Lat. For to lose. *Fleta*, lib. 6, c. 7, § 12.

PRO POSSE SUO. L. Lat. To the extent of his power or ability. *Bract.* fol. 109. *Pro posse nostro*; to the extent of our power. *Cart. Conf.* 49 Hen. III.

PRO POSSESSORE. Lat. As a possessor; by title of a possessor. *Dig.* 41. 5. See *Id.* 5. 3. 13.

PRO PULCHRE PLACITANDO. L. Lat. For beau-pleader; for ill or vicious pleading, (*pro stultiloquio.*) *Fleta*, lib. 2, c. 66, § 18.

PRO QUERENTE. L. Lat. For the plaintiff. Commonly abbreviated *pro quer'*.

PRO RATA, or PRO RATA PARTE. Lat. In proportion; in due proportion. *Inst.* 2. 22. 5.

PRO RATA ITINERIS. Lat. For the proportion of the voyage. 5 *East*, 316. 10 *Id.* 378.

PRO RATA PORTIONE, or PRO RATA PORTIONIS. Lat. In proportion. *Reg. Orig.* 268.

PRO RE NATA. Lat. For the immediate occasion. 1 *Bl. Com.* 174. 3 *Id.* 73, 433.

PRO SALUTE ANIMÆ. L. Lat. For the welfare of the soul; for the spiritual welfare, or benefit. *Hale's Anal.* sect. xxxix. 2 *Bl. Com.* 97.

PRO SOCIO. Lat. For a partner; the name of an action in behalf of a partner. A title of the civil law. *Dig.* 17. 2. *Cod.* 4. 37.

PRO SOLIDO. Lat. For the whole; as one, without division. *Dig.* 50. 17. 141. 1.

PRO SUO. Lat. For, or as one's own. *Dig.* 41. 10.

PRO TANTO. L. Lat. For so much ; to that extent. 1 *Story's Eq. Jur.* § 563. 1 *Vern.* 183. 2 *East*, 488. 3 *P. Wms.* 247. 1 *Campb.* 56.

PRO TOTO. Lat. For the whole. *Pro toto et in solido.* *Clerke's Prax. Cur. Adm.* tit. 11.

PROAMITA. Lat. In the civil law. A great-grandfather's sister. *Inst.* 3. 6. 3. *Bract.* fol. 68 b.

PROAVIA. Lat. In the civil law. A great-grandmother. *Inst.* 3. 6. 3. *Dig.* 38. 10. 1. 5.

PROAVUNCULUS. Lat. In the civil law. A great-grandfather's brother. *Inst.* 3. 6. 5. *Dig.* 38. 10. 1. 7. *Bract.* fol. 68 b.

PROAVUS. Lat. In the civil law. A great-grandfather. *Inst.* 3. 6. 3. *Dig.* 38. 10. 1. 5. *Bract.* fol. 67, 68.

PROBABILITY. In the law of evidence. Likeness to truth ; verisimilitude. *Butler's Analogy*, Introd. The likelihood of a proposition or fact being true or false, from its conformity or repugnancy to our general knowledge, observation and experience. *Locke on Hum. Underst.* b. 4, c. 15, ss. 3, 4. See *Wills' Circ. Ev.* 5. *Burr. Circ. Ev.* 80, 81.

PROBABLE CAUSE. In practice. Reasonable cause for the prosecution of a person. In an action for malicious prosecution, the question of probable or reasonable cause for the prosecution, however numerous or complicated the facts upon which it depends, is one of law and not of fact. 2 *Selden's R.* 384.

PROBABLE EVIDENCE. Presumptive evidence is so called, from its foundation in probability. *Butler's Analogy*, Introd.

PROBABLE REASONING. [Lat. *argumentum verisimile.*] In the law of evidence. Reasoning founded on the probability of the fact or proposition sought to be proved or shown ; reasoning in which the mind exercises a discretion in deducing a conclusion from premises. *Burr. Circ. Evid.* 22, 23.

PROBARE. Lat. To prove. *Necessitas probandi incumbit illi qui agit.* The necessity of proving lies upon him who sues. *Inst.* 2. 20. 4. The burden of proof rests upon the complainant. *Probare est fidem facere judici* ; to prove is to convince or satisfy the judge. *Theory of Pres. Proof*, 20.

PROBATE. [Lat. *probatio*, from *pro-*

*bare*, to prove.] Official proof, particularly the proof of a will, made by the executor before the ordinary, surrogate or probate judge ; which, in England, is done either in *common form*, that is, upon the executor's own oath, or *per testes*, (by the witnesses) in more solemn form of law, as in case where the validity of the will is disputed. 2 *Bl. Com.* 508. The latter form is the one in use in the United States.

The copy of a will (which has been proved, *supra*,) made out under the seal of the ordinary, surrogate or probate judge, and delivered to the executor with a certificate of its having been proved. 2 *Bl. Com.* 508.

In a larger sense, all the proceedings on proving a will, including the proof itself, the copy of the will and certificate. 2 *Bl. Com. ub. sup.* In the canon law, probate consisted of *probatio*, the proof of the will by the executor, and *approbatio*, the approbation given by the ecclesiastical judge to the proof. 4 *Reeves' Hist.* 77.

PROBATIO. Lat. [from *probare*, to prove.] In the civil law. Proof. *Ei incumbit probatio qui dicit, non qui negat*, (q. v.) *Dig.* 22. 3. 2. *Probatio viva* ; living proof ; proof by witnesses *viva voce*. *Bract.* fol. 400. *Co. Litt.* 6 b.

*Probatio mortua* ; dead proof ; proof by deeds, writings and instruments. *Id. ibid.*

*Probationes debent esse evidentes, (id est) perspicuæ et faciles intelligi.* Proofs ought to be evident, that is, clear and easy to be understood. *Co. Litt.* 283 a.

Direct evidence, as distinguished from indirect or circumstantial. *J. Voet ad Pand.* lib. 22, tit. 3, n. 15. *Burr. Circ. Evid.* 2, note.

PROBATIO PLENA. Lat. In the civil law. Full proof ; proof by two witnesses, or a public instrument. *Hallifax, Anal.* b. 3, ch. 9, num. 25. 3 *Bl. Com.* 370.

PROBATIO SEMI-PLENA. Lat. In the civil law. Half-full proof ; half proof. Proof by one witness, or a private instrument. *Hallifax, Anal.* b. 3, c. 9, n. 25. 3 *Bl. Com.* 370.

PROBATION. In Scotch law. Proof, or, more properly, evidence. *Bell's Dict.*

*Probatis extremis, præsumuntur media.* The extremes being proved, the intermediate proceedings are presumed. 1 *Greenl. Evid.* § 20. Where authority is given by law to executors, administrators, guardians

or other officers, to make sales of lands, upon being duly licensed by the courts, and they are required to advertise the sales in a particular manner, and to observe other formalities in their proceedings, the lapse of sufficient time, (which in most cases is fixed at thirty years,) raises a conclusive presumption that all the legal formalities of the sale were observed. *Id. ibid.* Here, the license to sell and the deed given are the two extremes which must be proved; the intermediate proceedings are presumed.

**PROBATIVE.** In the law of evidence. Having the effect of proof.

**PROBATIVE FACT.** In the law of evidence. A fact (an evidentiary fact) which actually has the effect of proving a fact sought. 1 *Benth. Jud. Evid.* 18.

**PROBATOR.** Lat. [from *probare*, to prove.] In old English law. A prover or approver. A person who, when indicted for treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed, or accused others, his accomplices in the same crime, in order to obtain his pardon. *Bract. fol.* 152. *Fleta*, lib. 1, c. 38, §§ 17, 18. *Cowell.* 4 *Bl. Com.* 330.

**PROBUS HOMO.** L. Lat. In old English law. A good man. *Probi homines*; good men. *Per sacramentum proborum hominum de visneto*; by the oath of good men of the visne or neighborhood. *Mag. Cart. Johan.* c. 20. This follows the original Articles, c. 9. The Magna Charta, 1 Hen. III. (c. 15,) reads, *Per sacramentum proborum et legalium hominum de visneto*. And so reads the Charter of 9 Hen. III. c. 14.

**PROBUS ET LEGALIS HOMO.** L. Lat. A good and lawful man. A phrase particularly applied to a juror or witness who was free from all exception. 3 *Bl. Com.* 102. *Magna Charta*, 9 Hen. III. c. 14. *Fleta*, lib. 6, c. 25, § 4.

**PROCEDENDO**, (or *De procedendo ad judicium*; of proceeding to judgment.) In practice. A writ by which a cause which has been removed from an inferior to a superior court by *certiorari*, or otherwise, is sent down again to the same court, to be proceeded in there, where it appears to the superior court that it was removed on insufficient grounds. *Cowell.* 1 *Tidd's Pr.* 408, 410. 3 *Steph. Com.* 681.

In English practice. A writ issuing out of chancery, in cases where the judges of

subordinate courts delay giving judgment, commanding them to proceed to judgment.\* 3 *Bl. Com.* 109. 3 *Steph. Com.* 681.

A writ by which the commission of a justice of the peace is revived, after having been suspended. 1 *Bl. Com.* 853.

**PROCEED.** In practice. To go; to be founded on. Cases are said to "proceed upon a principle." 3 *East*, 377. See *Go.*

To go on; to go on in a certain course, or in order to attain a certain end; to go on or act in form of law. See *Proceedings*.

**PROCEEDING.** In practice. A going on in form of law; an act done in form of law, as before a court or judicial officer; a judicial act, directed against persons or property, and contemplating some ultimate remedial object.

**PROCEEDINGS.** In practice. The steps or measures taken in the course of an action, including all that are taken. The proceedings of a suit embrace all matters that occur in its progress judicially. *Gardiner, J.* 2 *Selden's R.* 319, 320.

In a narrower sense,—the proceedings in a cause or matter, as entered on record; the record history of the case. *Id. ibid.*

**PROCEEDS.** Money obtained from the sale of property; money, goods or other articles of value, arising, proceeding or obtained from the sale of property; goods purchased with money obtained from the sale of other goods.

In commercial and insurance law, a return cargo is the *proceeds* of the outward cargo, or the sale of the outward cargo. But the term *proceeds* is sometimes properly applied to a return cargo when there has been no actual sale, as where it has been purchased on the credit of the cargo exported. 12 *Mass. R.* 71. And it has been said that the term *proceeds* would apply to the same goods sent back without sale, on the return voyage. 1 *Phillips on Ins.* 179, 180.

**PROCERES.** Lat. Nobles; lords. The House of Lords in England is called in Latin *Domus Procerum*. See *Dom. Proc.*

**PROCES.** L. Fr. [from *proceder*, to proceed.] Proceeding; mode of proceeding. *De proces en assises.* *Britt.* c. 46.

**PROCES-VERBAL.** Fr. In French law. An authentic minute of an official act, or statement of facts. *Buchanan. Webster.*

An inventory. *Ord. Mar.* liv. 3, tit. 9, art. 22.

**PROCESS.** [L. Fr. *proces*; L. Lat. *processus*, from *procedere*, to proceed.] In practice. In a general sense,—the entire proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end.\* It is equivalent to proceeding; progressive action; the progressive course of a business from its commencement to its termination. Marshall, C. J. 10 *Wheaton's R.* 1. In the old books, "the *process*" in an action is said to be "continued" from one term to another.

In a stricter sense,—a generic term for writs of the class called judicial, of which there are again subordinate divisions, as *mesne process*, *jury process*, *final process*, &c.

In old practice. The means used to compel a defendant to appear in court in compliance with the original writ; consisting of a verbal monition or warning, and the successive writs of attachment, (or *pone*,) *distringas*, and *capias ad respondendum*. 3 *Bl. Com.* 279—282. Otherwise called *original process*. *Id.* 279.

**PROCESS.** In patent law. A means or method employed to produce a certain result or effect, either by chemical action, by the operation or application of some element or power of nature, or of one substance to another, irrespective of any machine or mechanical device. In this sense, a *process* is patentable. Grier, J. 15 *Howard's R.* 267, 268.

The function or effect of a machine. In this sense, a *process* is not patentable. *Id.* 268.

A process, *eo nomine*, is not made the subject of a patent in our act of Congress. It is included under the general term "useful art." *Id.* 267.

**PROCESS ROLL.** In practice. A roll used for the entry of process to save the statute of limitations. 1 *Tidd's Pr.* 161, 162.

**PROCESSIONING.** In American law. A proceeding authorized by statute for ascertaining, marking and establishing the boundary lines of lands. In North Carolina, this is done by an officer called a *proceSSIONER*, appointed by the county courts to procession the lands of such persons as desire it. *Revised Code*, (ed. 1855,) ch. 88, p. 479. In Tennessee, it is done by the county surveyor. *Code of Tennessee*, (ed. 1858,) §§ 2020, 2024. In both states, a jury is summoned, if required.

This proceeding seems to be derived

from the old English practice of *perambulation*, (q. v.)

**PROCESSUS.** L. Lat. [from *procedere*, to proceed.] In old practice. Process; proceeding; the course of judicial proceeding; the course of proceeding in an action. *Fleta*, lib. 2, c. 47, § 4. See *Stet processus*.

*Processus legis est gravis vexatio; executio legis coronat opus.* The process of law is a grievous vexation; the execution of the law crowns the work. *Co. Litt.* 289 b. The proceedings in an action while in progress are burdensome and vexatious; the execution, being the end and object of the action, crowns the labor, or rewards it with success.

**PROCHEIN**, *Procheyn*, *Prochaine*, *Prochain*. L. Fr. [from Lat. *proximus*.] Next; nearest. *Procheyn heire*; next heir. *Britt.* c. 42. *Le prochein du saunke*; the next of blood. *Id.* c. 1. *Plus procheyn heire*; nearer heir. *Id.* c. 118, 119. *Car toutes sount owelment plus procheinnes*; for all are equally next or nearer [of blood.] *Id.* c. 119.

**PROCHEIN AMI**, (or **AMY**.) L. Fr. [L. Lat. *proximus amicus*.] In practice. Next friend; the person by whom an infant may prosecute. See *Next friend*. First introduced by the statute of Westminster 2. Lord King, C. 2 *Str.* 709.

**PROCHEINETE.** L. Fr. [from *prochein*, q. v.] Nearness; proximity. *Britt.* c. 118.

**PROCINCTUS.** Lat. [from *procingi*, (properly, *præcingi*,) to be girt about.] In the Roman law. A girding or preparing for battle. *Testamentum in procinctu*, or *testamentum procinctum*; a will made by a soldier, while girding himself, or preparing to engage in battle. *A. Gell. Noct. Att.* lib. xv. c. 27, n. 4. *Adam's Rom. Ant.* 62. *Calv. Lex.* This mode of making a will had become obsolete in the time of Justinian. *Inst.* 2. 10. 1.

**PROCLAMARE.** Lat. In the civil law. To cry out, or proclaim; to give warning. *Inst.* 4. 3. 5.

To assert a claim. *Calv. Lex.*

In old European law. To appeal (to a higher court.) *Flodoard.* lib. 3, c. 23. *Capitular.* lib. 6, c. 299. *Spelman.*

**PROCLAMATIO.** Lat. [from *proclamare*, q. v.] A crying out; a proclaiming or proclamation.

In old European law. A claim or complaint; an appeal. *Spelman.*

**PROCLAMATION.** [from Lat. *proclamatio*, q. v.] A crying out; a notice by public outcry, such as is given on the opening and adjournment of courts, by officers termed criers. See *Crier*, *Oyez*.

A public notice in writing, given by the sovereign or chief executive officer of a country, state or city, of some act done by the government, or to be done or required to be done by the people; either in execution of the law or otherwise. 1 *Bl. Com.* 270.

In old conveyancing. The public notice of a fine of lands, given by openly reading it in court sixteen (and afterwards four) times, and which was afterwards endorsed on the back of the record. 2 *Bl. Com.* 352.

In English practice. A writ issued at the same time with the writ of *exigent*, in the process of outlawry. 3 *Bl. Com.* 284.

In equity practice. Proclamation made by a sheriff upon a writ of attachment, summoning a defendant who has failed to appear, personally to appear and answer the plaintiff's bill. 3 *Bl. Com.* 444. Abolished by *Orders*, 26th August, 1841.

**PRO-CONSUL.** Lat. In the Roman law. Originally, a consul whose command was prolonged (*imperium prorogatum*;) after his office had expired. *Adam's Rom. Ant.* 176. An officer with consular authority, but without the title of *consul*.

The governor of a province. *Calv. Lex.*

**PROCREARE.** Lat. To beget. *Procreatus*; begotten. *Procreati et procreandi*; begotten and to be begotten. 1 *Inst.* 20. *Comb.* 154. *Procreatis et procreandis.* 1 *P. Wms.* 427.

**PROCTOR.** [from Lat. *procurator*, (q. v.) of which it is a contraction.] One who manages the business of another, on the mandate or commission of his principal; an attorney. See *Procurator*.

In practice. An officer in the admiralty and ecclesiastical courts, corresponding with attorney, at common law, and *solicitor*, in equity. 2 *Chitt. Gen. Pr.* 34. 3 *Bl. Com.* 25. *Hallifax, Anal.* b. 3, c. 3, n. 3. *Id.* c. 9, n. 5.

**PROCURARE.** Lat. [from *pro*, for, and *curare*, to take care of.] To take care of another's affairs for him, or in his behalf; to see to the affairs of another; to govern; to manage; to take care of, or superintend. *Dig.* 17. 1. 34.

**PROCURATIO.** Lat. [from *procurare*, to manage.] Management of another's affairs by his direction, and in his behalf; procuration; administration; agency. See *Procuration*.

A taking care of another. *Spelman*.

**PROCURATION.** Fr. and Eng. [from Lat. *procuratio*, q. v.] In foreign law. Agency created by a formal written instrument, especially by one under seal. *Story on Agency*, § 3.

**PROCURATION FEE, (or MONEY.)** In English law. Brokerage or commission allowed to scriveners and solicitors, for obtaining loans of money. 4 *Bl. Com.* 157.

**PROCURATOR.** Lat. [Fr. *procureur*; from *procurare*, to care for, to manage, see to, or take care of for another.] In the civil law. One who manages the affairs or business of another, under the instructions of his principal; (*qui aliena negotia mandato domini administrat*;) an agent; an attorney; a proxy; a proctor. *Dig.* 3. 3. 1. See *Procurator litis*, *Procurator negotiorum*.

In old English law. An agent or attorney; a bailiff or servant. Livery of seisin of lands was frequently made *per procuratorem*. *Bract.* fol. 40, 42 b, 43. *Fleta*, lib. 3, c. 15, § 5.

A proxy of a lord in parliament. *Whishaw.* 1 *Chitt. Bl. Com.* 168, note.

In ecclesiastical law. One who collected the fruits of a benefice for another. *Stat.* 3 *Ric.* II. st. 1, c. 3. *Cowell*.

An advocate of a religious house, (*procurator monasterii*;) who was to solicit the interest and plead the causes of the society. *Id.*

A proxy or representative of a parish church, (*procurator ecclesiæ parochialis*;) *Id.*

**PROCURATOR FISCAL.** In Scotch law. A public prosecutor. 1 *Swinton's R.* 508. *Brown's R. passim*.

**PROCURATOR LITIS.** In the Roman and civil law. The manager of another's suit or cause; a legal agent or attorney.\* Properly, one who managed another's cause in his absence; *cognitor* being the title of him who defended the cause of a person present. *Calv. Lex. Adam's Rom. Ant.* 280. In a strict sense, it signified one who acted for a plaintiff, (*actor*;) *defensor* being used to denote him who acted for a defendant. *Dig.* 3. 3. 1, gloss. marg. *Calv. Lex. Prateus*. But according to the Institutes, the title belonged to him who

managed for either party. *Cuicunque permiscris rem tuam agere, aut defendere, is tuus procurator intelligitur*; whoever you permit to manage or defend your cause, he is understood to be your proctor. *Inst.* 4. 10. 1.

**PROCURATOR NEGOTIORUM.** Lat. In the civil law. The manager of another's business or affairs; an agent; an attorney in fact. *Calv. Lex.*

**PROCURATOR PROVINCIAE.** Lat. In the Roman law. A provincial officer who managed the affairs of the revenue, and had a judicial power in matters that concerned the revenue. *Adam's Rom. Ant.* 178.

**PROCURATORIUM.** L. Lat. [from *procurator*, q. v.] In old English law. The procuratory or instrument by which any person or community constituted or delegated their *proctor* or proctors to represent them in any judicial court or cause. *Cowell.* A proxy. *Clerke's Prax. Cur. Adm.* tit. 7.

**PROCURATORY OF RESIGNATION.** In Scotch law. A form of proceeding by which a vassal authorizes the feu to be returned to his superior. *Bell's Dict.* It is analogous to the surrender of copyholds in England. *Wharton's Lex.*

**PROCURATOÜR.** L. Fr. [from Lat. *procurator*, q. v.] A proctor; an agent or attorney for another. *Britt.* c. 4. *Par procuratours ou par baillyfs.* *Id.* c. 42.

**PROCURATRIX.** Lat. In old English law. A female agent or attorney in fact; as a mother in behalf of her children. *Fleta*, lib. 3, c. 4, § 4.

**PROCURER.** Fr. In French law. An advocate, proctor or attorney. *Brande.*

**PRODES HOMES.** L. Fr. In old English law. Discreet men. A title given to the barons, or other military tenants, who were called to the king's council. *Cowell. Artic. sup. Cart.*

**PRODIGUS.** Lat. In the civil law. A spendthrift or prodigal; one who spent without measure and without end, (*qui neque modum neque finem expensarum habet*;) one who squandered or recklessly dissipated his property. *Inst.* 2. 12. 3.

**PRODUCTIO SECTÆ.** L. Lat. In old English law. Production of suit; the production, by a plaintiff, of his *secta* or suit, that is, a number of persons prepared to confirm what he had stated in his count, (or *intentio*.) This was done at the time of counting, or immediately after, and was

expressed by the phrase at the end of the count or declaration: "*Et inde producit sectam*," (and thereupon, or thereof, he produces suit;) translated in the modern forms: "And therefore he brings suit." *Et inde statim producat sectam sufficientem, duos ad minus, vel tres, vel plures, si possit*; and thereupon he should immediately produce a sufficient suit, two at least, or three or more, if he can. *Bract.* fol. 410. See *Id.* 159, 314 b. *Steph. Pl.* 429, and note.

**PRODUCTION OF SUIT.** [L. Lat. *productio sectæ*.] In pleading. The formula, "And therefore he brings his suit, &c.," with which declarations always conclude. *Steph. Pl.* 428, 429. See *Productio sectæ*.

**PROFER.** [L. Lat. *proferus*, *profrus*, from L. Fr. *proferer*, to produce.] In old English law. An offer or proffer; an offer or endeavor to proceed in an action, by any man concerned to do so. *Cowell.* A judicial offer to do some act. See *Proferus*.

A return made by a sheriff of his accounts into the exchequer; a payment made on such return. *Cowell.* See *Proferus*.

**PROFERT**, (he produces;) **PROFERT IN CURIA**, or **CURIAM**, (he produces in court.) In old practice. The production in court, by a party, of an instrument alleged by him in pleading; or rather, the entry made on the record, that the party so produced the instrument.\*

In modern practice. An allegation formally made in a pleading, where a party alleges a deed, that he *shows it in court*, it being in fact retained in his own custody. *Steph. Pl.* 67. Where either party alleges any deed, he is, in general, obliged to make *profert* of such deed, that is, to produce it in court simultaneously with the pleading in which it is alleged. *Id.* 66. On *profert* being made, the deed is, by intendment of law, immediately in the possession of the court. 3 *Salk.* 119. 6 *Man. & Gr.* 277, note. Oyer (q. v.) and *profert* seem to have been abolished in England by the common law procedure act. See 25 *Eng. Law & Eq. R.* 304.

**PROFERUS**, *Profrus*. L. Lat. [from L. Fr. *proferer* or *profrer*, to offer.] In old English practice. An offer or proffer; an offer made in court; a judicial offer to do some act. Called, in old English, *profer*, (q. v.) *Si autem proferum quod coram*

*coronatoribus et vic' fecerint, advocaverint coram justic'*; but if they shall maintain before the justices the offer [to accuse their accomplices] which they made before the coroners and sheriffs. *Fleta*, lib. 1, c. 38, § 16. Mr. Barrington observes that "the word *profrus* is a very uncommon one, but signifies the same with the plaintiff's suit, [*secta* ;] this is the sense of the French word *profre* in Britton, which answers to the *producit se*, [offers himself.]" *Barr. Obs. Stat.* 226. It probably corresponded with the *obtulit* or *optulit* (qq. v.) of Bracton and *Fleta*. But it also had a more general sense, as just explained.

An accounting in the exchequer; a return made by officers of their accounts into the exchequer. *Quod omnes vic', firmarii, ballivi libertatum, et alii qui ad profrum scaccarii venire debent*; that all sheriffs, farmers, bailiffs of liberties and others who ought to come to the profer of the exchequer. *Fleta*, lib. 2, c. 32, § 2.

**PROFICUUM.** L. Lat. In old English law. Profit. *Proficuum terræ*; profit of land. *Reg. Orig.* 95. *Cum proficuo exituum*; with the profit of the issues. *Fleta*, lib. 2, c. 70, § 1. *Proficua*; profits. *Bract.* fol. 49. *Hale's Anal.* sect. xxiv. 3 *Man. Gr. & Scott*, 92.

**PROFITS.** The produce of lands; as in the phrase "rents, issues and profits." Under this word, it has been held that land itself will pass. *Co. Litt.* 4 b. *Com. Dig.* Grant, E. 5. *Cro. Eliz.* 190. 17 *Johns. R.* 548.

The avails of business; as of a partnership. See *Story on Partn.* §§ 18—29.

A division sometimes made of incorporeal hereditaments, as distinguished from *easements*, which tend rather to the convenience than the profit of the claimant. 2 *Steph. Com.* 2.

**PROGENER.** Lat. In the civil law. A grandson-in-law. *Dig.* 38. 10. 4. 6.

**PROHÆREDES.** L. Lat. In old European law. Persons acting for heirs, or in place of heirs. *Marculf.* lib. 2, c. 17. *Spelman.*

Remote heirs. *Chart. Alam.* n. 50. *Spelman.*

**PROHIBITION.** In practice. A writ to forbid a court from proceeding in a cause depending before it, on the suggestion that the cognizance of such cause does not belong to it.\* *Cowell.* In England it issues, properly, only out of the court of King's (or Queen's) Bench, but may also be had

in some cases, out of the Court of Chancery, Common Pleas or Exchequer, and may be directed either to inferior courts of common law, or to the courts christian, university courts, or court of admiralty, where they concern themselves with any matter not within their jurisdiction. 3 *Bl. Com.* 112. 3 *Steph. Com.* 685.

In American practice, a similar writ has been adopted. 2 *Burr. Pr.* 182. 12 *Grattan's R.* 17.

**Prohibetur ne quis faciat in suo quod nocere possit alieno.** It is forbidden for any one to do or make on his own land, what may injure another's. 9 *Co.* 59 a, *Aldred's case.*

**PROINDE.** L. Lat. Therefore. 2 *Mod.* 33.

**PROJECTIO.** Lat. [from *projicere*, to cast up.] In old English law. A throwing up of earth by the sea. Used by Sir Matthew Hale as a synonyme of *alluvio*, (q. v.)

**PROJICERE.** L. Lat. In old practice. To cast (an essoyn.) *Fleta*, lib. 6, c. 10, § 12.

**PROLES.** Lat. Issue; offspring; progeny. *Cowell.*

In a stricter sense, issue of a lawful marriage. *Id.* *Fortescue de L. L. Angliæ*, c. 39, note.

**PROLETARIUS.** Lat. In the Roman law. Of a mean condition. The *proletarii* included those among the common people (*plebs*) whose fortunes were below a certain valuation. *A. Gell. Noct. Att.* lib. xvi. c. 10. *Calv. Lex.*

**PROLYTÆ.** Græco-Lat. In Roman law. A name given to students of law in the fifth year of their course; as being in advance of the *Lytæ*, or students of the fourth year. *Brissonius. Calv. Lex.* See *Lytæ.*

**PROMATERTERA.** Lat. In the civil law. A great-grandmother's sister. *Inst.* 3. 6. 3.

**PROMISE.** [Lat. *promissio*, from *promittere*, to promise.] An undertaking or engagement by one person to another, either in words or in writing, to do or not to do some particular thing. Properly, an undertaking by parol, or not under seal; a promise by deed being technically called a *covenant*.\* 2 *Steph. Com.* 108. A promise is distinguished from an agreement or contract, by its not importing or implying *mutuality*; it being, in other words, an unilateral engagement only. See *Contract*

Of this quality a common promissory note furnishes a familiar illustration.\* The word *promise* is used to denote the engagement of a person, without regard to the consideration for it, or corresponding duty of the other party. *Chitty on Contracts*, 2.

**PROMISSIO.** Lat. In old English law. A promise. *Promissio rei incertæ nullius juris esse reputatur*; a promise of an uncertain thing is held to be of no validity. *Fleta*, lib. 2, c. 60, § 24.

**PROMISSOR.** Lat. [from *promittere*, to promise.] In the civil law. A promiser; properly the party who undertook to do a thing in answer to the interrogation of the other party, who was called the *stipulator*. The *stipulator* asked, "*Promittis?*" or, more commonly, "*Spondes?*" (Do you promise or engage?) The *promissor* replied, "*Promitto*," (I promise,) or "*Spondeo*," (I undertake.) *Inst.* 3. 16. 1. *Id.* 3. 17, pr. See *Fleta*, lib. 2, c. 60, §§ 24, 25.

**PROMISSORY NOTE.** In mercantile law. A written promise by one person to another, for the payment of money at a specified time, absolutely and at all events. 3 *Kent's Com.* 74.—A written engagement by one person to pay another person therein named, absolutely and unconditionally, a certain sum of money, at a time specified therein. *Story on Prom. Notes*, § 1.—A promise or engagement, in writing, to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named, or to his order, or bearer. *Byles on Bills*, 1, 4. Otherwise called a *note of hand*. A promissory note must be for the payment of a sum named, absolutely, and be payable to a particular person. 35 *Maine R.* 364. 23 *Mississippi R.* 233. 13 *Georgia R.* 55. See *United States Digest*, Promissory note.

**PROMITTERE.** Lat. In the civil law. To promise. "*Promittis? Promitto*," (Do you promise? I do promise,) was one of the forms of words by which an obligation might be contracted. *Inst.* 3. 16. 1. But the more common word of engagement was "*Spondeo*," (I undertake.) *Id. ibid.* *Id.* 3. 17, pr.

**PROMOTER.** In old English law. A common informer. 3 *Inst.* 191. *Cowell*.

**PROMULGARE.** Lat. [quasi *provulgare*, to publish.] In the Roman law. To make public; to make publicly known; to promulge or promulgate.

*Promulgare legem* originally signified

to make the *proposal* of a law publicly known, in order that every one might be able to take it into consideration, *before* it was voted upon in the *comitia*. 1 *Mackeld. Civ. Law*, 3, § 5. In the time of Justinian, it had acquired its present meaning,—to publish or make known a law, *after* its enactment. *Proam. Inst.* § 1.

**PROMULGATE.** [from *promulgare*, q. v.] To make public; to make a law known, after its enactment or passage.\* 1 *Kent's Com.* 458. *Promulge* is used by *Cowell*.

**PROMYS.** L. Fr. Promised. *A qui certeyne terre soit promys, et dount escriptz sount faitz*; to whom certain land is promised, [engaged to be conveyed,] and of which the writings are made. *Britt.* c. 36.

**PRONEPOS.** Lat. In the civil law. A great-grandson. *Inst.* 3. 6. 1. *Dig.* 38. 10. 1. 5. *Bract.* fol. 67.

**PRONEPTIS.** Lat. In the civil law. A great-granddaughter. *Inst.* 3. 6. 1. *Dig.* 38. 10. 1. 5. *Bract.* fol. 67.

**PRONUNCIATIO.** Lat. [from *pronunciare*, to pronounce.] In old English law. Delivery of judgment on a verdict. *Bract.* fol. 289.

**PRONUNCIATION.** L. Fr. A sentence or decree. *Kelham*.

**PRONURUS.** Lat. In the civil law. The wife of a grandson or great grandson. *Dig.* 38. 10. 4. 6. *Brissonius*.

**PROOF.** [Lat. *probatio*, q. v.] The establishment of one or more facts by evidence. The satisfactory establishment of the truth or falsity of some alleged matter of fact, by evidence adduced for the purpose.\* Things established by competent and satisfactory evidence are said to be proved. 1 *Greenl. Evid.* § 1.

That which convinces the mind of a truth. *Domat's Civ. Law*, part 1, b. 3, tit. 6.—That which demonstrates, makes clear or ascertains the truth of a fact or point in issue.\* 3 *Bl. Com.* 367.—Any thing which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. *Best on Evid.* 7, § 10.

The result or effect of evidence. 1 *Greenl. Evid.* § 1. *Wills' Circ. Evid.* 2. *Burr. Circ. Evid.* 1, 196. Evidence which produces a satisfactory impression upon the mind, or creates a persuasion or assurance of the truth of the fact sought to be established. *Id. ibid.*

The result of direct evidence. The word is used in this sense by some of the continental civilians. *Poth. Oblig.* part 4, c. 3, sect. 2. *J. Voet ad Pand.* lib. 22, tit. 3, n. 15.

Evidence in general. *Proof* and *evidence* are constantly used in practice, as synonymous, and are sometimes so treated in the books. See *Evidence*. Properly speaking, however, evidence is only the *medium* of proof; proof is the *effect* of evidence. *Wills' Circ. Evid.* 2. 1 *Greenl. Evid.* § 1. See *Evidence*, *Prove*.

PROPARS. L. Lat. [L. Fr. *pourparti*.] In old English law. Division of lands among parceners; partition. *Breve de partage*; a writ of partition. *Bract.* fol. 276, 278 b. *Fleta*, lib. 5, c. 6, § 36.

An allotted share, or *pourpart*. *Cowell*, voc. *Pourparty*.

PROPATRUUS. Lat. In the civil law. A great-grandfather's brother. *Inst.* 3. 6. 3. *Bract.* fol. 68 b.

PROPER. [Lat. *proprius*, q. v.] Peculiar; particular; one's own. In proper person, (*in propria persona*;) in one's own person.

PROPERTY. [Lat. *proprietas*, from *proprius*, peculiar, private, one's own.] That which is proper or peculiar to one; that which belongs to one; that which is one's own; that to which one has an unrestricted and exclusive right, including all that is one's own, whether corporeal or incorporeal. Property, in this sense, denotes the *things* themselves which are the subjects of right, as in the expressions "real property," "personal property."

The right by virtue of which a thing belongs to one, or is one's own; ownership; dominion; the unrestricted and exclusive right to a thing; the right to dispose of the substance of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. 1 *Mackeld. Civ. Law*, 269, § 259. The exclusive right of using and disposing of a subject as one's own. *Bell's Dict.* *Tayl. Civ. Law*, 476. This is the strict legal sense of the word, as in the expressions "property in land," "property in chattels." *Things* are regarded in law not as property, but as the *objects* of property. 2 *Bl. Com.* 15. Property has been judicially defined, the right or interest which one has in lands or chattels. Tilghman, C. J. 6 *Binney's R.* 94. Spencer, C. J. 17 *Johns. R.* 283. See 1 *Comstock's R.* 20, 24. 3 *Kernan's R.* 396.

The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. 2 *Bl. Com.* 2. The right of property consists in the free use, enjoyment and disposal of all a person's acquisitions, without any control or diminution, save only by the laws of the land. 1 *Id.* 138.

Property is the highest right a man can have to any thing; being used for that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy. Spencer, Ch. J. 17 *Johns. R.* 281, 283. As applied to lands, the term includes every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract, those which are executory, as well as those which are executed. Marshall, C. J. 4 *Peters' R.* 512.

In old English law, the term *property* was used in a limited sense, as denoting the ownership of *chattels*, in contradistinction to *estate*, which denoted an interest in *lands*. "The ownership of a chattel personal," says Finch, "is termed a *property*." *Law*, b. 2, c. 17. "The right of things personal," says Lord Hale, "is called *propriety*." *Anal.* sect. xxvi. *Propriety*, closely following the Lat. *proprietas*, seems to have been the original form of the word.

"PROPERTY" is a word of extensive import in wills, and will carry real as well as personal estate, unless associated with words which explain or control it. 1 *Jarman on Wills*, 658, 663, (566, 570, Perkins' ed.) So, the expression "all my property," will carry an estate of inheritance, if there be nothing in the other parts of the will to limit or control the operation of the words. 4 *Kent's Com.* 535.

"*Property*," in a policy of insurance, has been held to include current bank bills owned by the assured, on board the vessel. 5 *Metcalf's R.* 1.

PROPINQUITY. [from L. Lat. *propinquus*, q. v.] In Scotch law. The relationship which exists among the members of a family or their descendants. *Bell's Dict.*

PROPINQUUS. Lat. In old English law. Near; near of kin. *Propinquior excludit propinquum, propinquus remotum, remotus remotiorem*; the nearer [heir] excludes the near; the near [excludes] the remote; the remote [excludes] the remoter.

*Bract.* fol. 64. *Fleta*, lib. 6, c. 1, § 11. Quoted by Lord Coke. *Co. Litt.* 10 b.

PROPIOR SOBRINO, PROPIOR SOBRINA. Lat. In the civil law. The son or daughter of a great uncle or great aunt, paternal or maternal. *Inst.* 3. 6. 5.

PROPIOS (or PROPRIOS.) Span. In Spanish American law. Certain portions of ground laid off and reserved, on the foundation of a town, as the unalienable property of the town, for the purpose of erecting public buildings, markets, &c. or to be used in any other way, under the direction of the municipality, for the advancement of the revenues or the prosperity of the place. 12 *Peters' R.* 442, note.

PROPONE. [from Lat. *proponere*, q. v.] In Scotch law. To state. To *propone* a defence, is to state or move it. 1 *Kames' Equity*, pref.

PROPONENT. [Lat. *proponens*, from *proponere*, q. v.] In ecclesiastical practice. The title of a party making or propounding an allegation. "And the party *proponent* doth allege and propound as before." 4 *Chitt. Gen. Pr.* 170, 171, *et seq.*

PROPONERE. Lat. In old English practice. To offer, present or exhibit; to set forth; to propound; Scotticè, to propose. After the parties had appeared in court, and the writ had been read and heard, the first step in the proceedings was for the demandant to propound, offer or state his count, (*debet petens proponere intentionem suam*,) &c. *Bract.* fol. 255 b. See *Id.* 266 b, 313 b. *Debet sic actionem proponere*; he ought to propound his action thus. *Fleta*, lib. 2, c. 60, § 21.

PROPORCITAS, *Proportatio*. L. Lat. In old records. The purport, tenor or substance of a thing; a report or relation of a matter. Called *proport*. *Spelman*.

In old Scotch law. A verdict; called the *proport* or *report* of the jury or assise. *Quon. Attach.* c. 68. *Skene*, in loc. *Spelman*.

PROPORTIONALITER. L. Lat. In old English law. Proportionally; in proportion. *Fleta*, lib. 5, c. 9, § 14.

PROPORTUM. L. Lat. In old records. Purport; intention, or meaning. *Cowell. Blount. Carta. Rogeri de Quincy*, 31 Hen. III.

PROPOSITUM. Lat. [from *proponere*, to purpose, or aim at.] Purpose; design; object. *Voluntas et propositum distinguunt maleficium*. Will and design distinguish

crime, [are essential to constitute crime.] *Bract.* fol. 136 b.

PROPOSITUS. L. Lat. [from *proponere*, to propose.] In the law of descents. The person proposed, (*persona proposita*;) the person from whom succession is to be traced or degrees of consanguinity reckoned. 2 *Bl. Com.* 224. *Id.* 254, in table.

PROPOUND. [from Lat. *proponere*, q. v.] In ecclesiastical practice. To present or offer; to set forth or state. See *Proponent*. To *propound* a will, is to present it to the proper court for probate. 4 *Chitt. Gen. Pr.* 167, 169.

PROPRE. L. Fr. [from Lat. *proprius*, q. v.] Proper; own. *Sa propre persone*; his proper person. *Britt.* c. 121.

PROPRIEDAD. Span. [from Lat. *proprietas*.] In Spanish law. Property. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

PROPRIETAS. Lat. [from *proprius*, q. v.] In the civil and old English law. Property; that which is one's own; ownership. See *Property*.

*Proprietas plena*; full property, including not only the title, but the usufruct, or exclusive right to the use. *Calv. Lex.*

*Proprietas nuda*; naked or mere property or ownership; the mere title, separate from the usufruct. *Id.*

*Proprietas totius navis carinæ causam sequitur*. The property of the whole ship follows the condition of the keel. *Dig.* 6. 1. 61. If a man builds a vessel from the very keel with the materials of another, the vessel belongs to the owner of the materials. 2 *Kent's Com.* 362.

PROPRIETAS. Lat. In feudal law. Allodial property, as distinguished from *beneficium*. 1 *Rob. Ch.* V. App. note viii.

PROPRIETAS. L. Lat. Propriety; proper meaning or application. *Proprietas verborum est salus proprietatum*. The propriety of words [observance of the proper import of words,] is the safety [salvation, safeguard] of properties. *Jenk. Cent.* 16, case 28.

*Proprietates verborum servandæ sunt*. The proprieties of words [proper meanings of words,] are to be preserved or adhered to. *Jenk. Cent.* 136, case 78.

PROPRIETY. In old English law. Property. "Propriety in action; propriety in possession; mixed propriety." *Hale's Anal.* sect. xxvi.

PROPRIO VIGORE. L. Lat. By its or their own force, or intrinsic meaning.

2 *Powell on Devises*, 167. 3 *East*, 516.  
1 *Id.* 33. *Cas. temp. Hardwicke*, 113.

PROPRIUS, *Proprium*. Lat. Peculiar; private; proper; exclusive; one's own. *Proprius servus*; one's own slave. *Inst.* 2. 14, pr. *Proprius judex*; a proper judge; one that properly had jurisdiction. Sometimes called *suus judex*; one's own judge. *Bract.* fol. 401. *De proprio vivat*; should live on his own means. *Fleta*, lib. 2, c. 71, § 3.

PROPTER. Lat. On account of; for. *Propter affectum*; on account of bias or favorable inclination. *Co. Litt.* 156 b.

*Propter defectum*; on account of defect, deficiency, or incompetency. *Id. ibid.*

*Propter delictum*; on account of crime. *Id. ibid.*

*Propter honoris respectum*; on account of respect of honor or rank. *Id. ibid.* 3 *Bl. Com.* 362, 363.

*Propter defectum sanguinis*; on account of failure or deficiency of blood; as by dying without heirs. 2 *Bl. Com.* 245.

*Propter delictum tenentis*; on account of the crime of the tenant, as if his blood were attainted. *Id. ibid.*

*Propter majorem securitatem*; for greater security. *Yearb. M.* 8 Hen. VI. 16.

*Propter scævitiā aut adulterium*; on account of cruelty or adultery. 2 *Kent's Com.* 125.

PROPUGNACULUM. Lat. A bulwark; a defence. *Propugnaculum hæreditatis*; the fortress or defence of an inheritance. *Bacon's Arg. Case of Impeachment of Waste*; *Works*, iv. 217.

PROROGATION. In English law. The continuance of parliament from one session to another. 1 *Bl. Com.* 186, 187.

PROSECUTE. [Lat. *prosequi*, q. v.] To follow up; to carry on an action or other judicial proceeding.

To proceed against a person judicially; to proceed against a person criminally. See *Prosecution*.

PROSECUTIO. Lat. In old English law. A following up; pursuit. *Fleta*, lib. 3, c. 2, § 2.

PROSECUTIO. [Lat. *prosecutio*, from *prosequi*, to follow up.] In practice. The following up, or carrying on of a judicial proceeding.

In a stricter sense,—the carrying on of a judicial proceeding in behalf of a complaining party; as distinguished from *defence*. See *Prosequi*.

In the strictest sense,—the carrying on

of a criminal proceeding in behalf of the state or government, as by indictment or information. 4 *Bl. Com.* 301. The state or government, as carrying on such a proceeding.

PROSECUTOR. In criminal law. One who prosecutes another for a crime in the name of the government.

PROSECUTRIX. In criminal law. A female prosecutor.

PROSEQUI. Lat. In old English law. To follow after; to pursue or prosecute. An action is called by Bracton *jus prosequendi*, a right of prosecuting; and this, he observes, is to distinguish it from an exception, (*exceptio*, or *plea*,) by which we do not follow after another, but are rather followed by another, (*qua non persequimur alium, sed magis ab alio prosequuti* [sumus.]) *Bract.* fol. 98 b. The word in the civil law definition (which Bracton obviously borrowed) is *persequendi*. See *Actio*. What induced this change does not appear, but the substituted word has always maintained its footing in English law, and the common terms *prosecute* and *prosecution*, (qq. v.) are clearly framed from it.

PROSOCER. Lat. In the civil law. A father-in-law's father. *Calv. Lex.*

PROSOCRUS. Lat. In the civil law. A wife's grandmother. *Dig.* 38. 10. 4. 6.

ΠΡΟΣΩΠΟΝ, Πρόσωπον. Gr. In the civil law. Person; a person. *Dig.* 26. 3. 1.

PROSPECTUS. Lat. [from *prospicere*, to view; to look before.] In the civil law. Prospect; the view of external objects. *Dig.* 8. 2. 3, 15. It was distinguished from *lumen*. *Id. ibid.* 16.

PROSTERNERE. Lat. In old English law. To throw down; to break or pull down; to abate. *Prostratus*, thrown down. *Fleta*, lib. 4, c. 1, § 19.

ΠΡΩΤΑ, Πρώτα. Gr. The name given to the first part of the Digests or Pandects, comprising the first four books. *Dig. Proëm. (De Conf. Dig.)* § 2. *Cod.* 1. 17. 2, § 2.

PROTECTIO. Lat. [from *protegere*, to cover or shelter.] Protection; defence; shelter from wrong; support of right.

*Protectio trahit subjectionem, et subjectio protectionem*. Protection draws with it subjection, and subjection protection. 7 *Co.* 5 a, *Calvin's case*. The protection of an individual by government is on condition of his submission to the laws; and such submission, on the other hand, entitles

the individual to the protection of the government. *Broom's Max.* 35.

**PROTECTION.** In English law. A writ by which the king might, by a special prerogative, privilege a defendant from all personal and many real suits for one year at a time, and no longer, in respect of his being engaged in his service out of the realm. 3 *Bl. Com.* 289. See *Reg. Orig.* 22 b. *F. N. B.* 28 B. Now disused.

**PROTECTION.** In maritime law. A certificate given by a public notary to a seaman, certifying that the bearer named therein is a citizen of the United States.

**PROTECTOR OF SETTLEMENT.** In English law. An appellation given, under the late statute of 3 & 4 Will. IV. c. 74, to the person who, in family settlements, is the owner of the first estate of freehold prior to an estate tail, and whose consent is necessary to enable the tenant in tail to bar an ulterior estate, that is, an estate taking effect on the determination of the estate tail.\* 1 *Steph. Com.* 237, 533.

**PROTEST.** A solemn declaration against an act about to be done, or already done, expressive of disapprobation or dissent; or made with the view of preserving some right which, but for such declaration, might be taken to be relinquished, or of exonerating the party protesting from some liability which might otherwise attach to him. See 1 *Bl. Com.* 168.

In mercantile law. A formal statement in writing by a public notary, under seal, that a certain bill of exchange or promissory note (describing it,) was, on a certain day, presented for payment or acceptance, and that such payment or acceptance was refused, whereupon the notary *protests* against the parties for the loss or damage which may arise therefrom. See *Story on Bills*, § 276, and note. 3 *Kent's Com.* 93. 9 *Metcalf's R.* 174. 1 *Comstock's R.* 186. 1 *Wisconsin R.* 264. *United States Digest*, Promissory note.—A solemn declaration written by the notary, under a fair copy of the bill, stating that the payment or acceptance has been demanded and refused, the reason, if any, assigned, and that the bill is therefore protested. *Grier, J.* 17 *Howard's R.* 607. The court in this case decided that a mistake in copying or deciphering the abbreviations and flourishes with which the Christian name of the acceptor's agent is enveloped, does not vitiate the protest.

Although, in a technical sense, the term *protest* means only the formal declaration drawn up and signed by the notary, yet, as used by commercial men, it includes all the steps necessary to charge an endorser. 2 *Ohio R. (N. S.)* 345.

A declaration made by the master of a vessel before a notary, consul or other authorized officer, at the first port reached after some damage sustained by stress of weather, stating the particulars, and showing that the damage was not occasioned by his misconduct or neglect; or, in other words, giving a circumstantial account of the accidents which have occurred, and *protesting* against them. This is called *noting* the protest, which is afterwards *extended*, that is, set forth in writing in full detail, sworn to by the master and officers, and attested by the notary. *Jacobsen's Sea Laws*, 373. 3 *Kent's Com.* 213, note.

**PROTESTANDO.** L. Lat. *Protesting*. The emphatic word formerly used in pleading by way of protestation. 3 *Bl. Com.* 311. See *Protestation*.

**PROTESTATION.** In pleading. An oblique allegation or denial of some fact, *protesting*, (*protestando*,) that such a matter does or does not exist, and at the same time avoiding a direct affirmative or denial. 3 *Bl. Com.* 311. Where the pleader passed over, without traverse, any traversable fact alleged, and at the same time wished to preserve the power of denying it *in another action*, he made, collaterally or incidentally to his main pleading, a declaration importing that this fact was untrue, which was called a *protestation*, and it had the effect of enabling the party to dispute in another action the fact so passed over. *Steph. Pl.* 235, (Am. ed. 1824.) This formula was abolished in English practice by Rule III. T. 4 Will. IV.

**"PROTESTED FOR NON-PAYMENT."** These words, in mercantile law, have come to have a technical meaning. In them is included not only the idea that the bill is past due, but that payment of it has been demanded; and not being paid, it is therefore dishonored. They mean that the process necessary to dishonor the bill, to wit, demand, refusal of payment and the drawing up of a formal protest, has been gone through with. All this is included in and meant by the term "*protested*." 2 *Douglas' (Mich.) R.* 425, cited in 1 *Wisconsin R.* 264, 278.

**PROTHONOTARY,** *Protonotary, Pro-*

*notary, Preignothory.* [L. Lat. *protonotarius*, from Gr. *πρωτος*, first, and Lat. *notarius*, a notary, *prænotarius*.] A chief clerk in the English courts of King's Bench and Common Pleas; (literally, a chief notary.) *Cowell. Spelman*, voc. *Protonotarius*. 1 *Tidd's Pr.* 43, 45, 47. This office was abolished on the establishment of the modern office of *masters*, (q. v.) *Stat. 7 Will. IV. and 1 Vict. c. 30.*

The chief clerks of some American courts are called *prothonotaries*.

**PROTOCOL.** [from L. Lat. *protocollum*, q. v.] The first draught, or rough minutes of an instrument or transaction; the original copy of a despatch, treaty or other document. *Brande. 8 Texas R.* 210. See *Protocollum*. *Protocols* are sometimes called "*matrixes* of title." 7 *Texas R.* 359.

In old Scotch practice. A book, marked by the clerk-register, and delivered to a notary on his admission, in which he was directed to insert all the instruments he had occasion to execute; to be preserved as a record. *Bell's Dict.*

**PROTOCOLLUM.** Græco-Lat. [Gr. *πρωτοκολλον*.] In the civil law. A brief note or memorandum of a transaction made by a notary, for the purpose of being afterwards extended or written out in full, (*quod breviter et succincte notatur à tabellione, ut extendi deinde atque absolvi possit.*) *Culv. Lex.* A hasty note of a transaction, as it were *prima collectio rerum*, the first getting together of matters. *Id.* Derived, according to some, from Gr. *πρωτος*, first, and *κολλα*, glue or wax, referring to the wax spread over the tablets used for writing; or, according to others, from *κωλον*, a member, being the first member or part of the writing. *Id.*

*Protocollum*, (Gr. *πρωτοκολλον*.) among the Romans seems to have originally signified a formal caption or heading of instruments drawn by *tabelliones*, (notaries;) or, more particularly, a writing at the head of the paper used by these officers, containing the name of the *comes sacrarum largitionum*, (chief officer of the imperial treasury,) and the time when the instrument was made. *Nov. 44.* It seems to have served the purpose of an official stamp. In the forty-fourth Novel, the *tabelliones* are forbidden to write their instruments upon any other paper than such as contained this *protocollum* at the head.

**PROTOCOLO.** Span. In Spanish law. The original draft or writing of an instru-

ment which remains in the possession of the *escribano*, or notary. *White's New Recop.* lib. 3, tit. 7, c. 5, § 2. *Id.* § 3, note.

**PROUT.** As. *Prout* he declared. 12 *Mod.* 25. *Prout moris est*; as is the custom (or practice of the court.) 3 *How. St. Trials*, 112, 113. Called "a word of reference." *Id.* 6. *Prout lex postulat*; as the law requires. *Vaugh.* 260.

**PROUT PATET PER RECORDUM.**

L. Lat. As appears by the record; as appears of record. Words of reference to a record, used in old pleadings and entries. *T. Raym.* 50. 1 *Ld. Rayn.* 93. *Comb.* 299. 11 *East*, 565. Otherwise expressed, *prout constat per recordum.* 2 *Sulk.* 428.

**PROVABLE.** L. Fr. *Provable*; justifiable; manifest. *Kelham. Provablement*; plainly. *Id.*

**PROVE.** [from L. Fr. *prover*; from Lat. *probare*, to prove.] To establish by evidence; to make out a case or claim by evidence. "Proof generally shall be intended by a jury; and making it appear and proving are the same thing." *Freem.* 53. See *Proof*.

**PROVER.** [L. Lat. *probator*.] In old English law. A person who, on being indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed or accused others his accomplices in the same crime, in order to obtain his pardon. 4 *Bl. Com.* 329, 330.

**PROVER.** L. Lat. [from Lat. *probare*.] In old English law. To prove; to establish or make good. *Prist à prover par son cors*; ready to prove by his body. *Britt. c. 22.* *Prest de prover en toutz les maneres que la court vodra agarder*; ready to prove in all manners that the court shall award. *Id. ibid.* *Et si la chartre et le done soient deditis, soient proves, et si elz soient proves, &c.*; and if the charter and the gift be denied, they shall be proved, and if they be proved, &c. *Id. c. 93.*

**PROVIDED ALWAYS.** [L. Lat. *provisio semper*.] Words by which a proviso in deeds is most properly introduced. *Cro. Car.* 128. See *Proviso*. The word "provided" will constitute a condition. 21 *Alabama R.* 89.

**PROVINCIA.** L. Lat. In old English law. A county. *Spelman. Fleta*, lib. 2, c. 72, § 1. *Id.* lib. 4, c. 5, § 4.

**PROVINCIAL CONSTITUTIONS.** In English law. The decrees of provincial synods held under the divers archbishops of Canterbury, from Stephen Langton, in

the reign of Hen. III. to Henry Chichele, in the reign of Henry V. and adopted also by the province of York in the reign of Henry VI. 1 *Bl. Com.* 83. These constituted a part of the canon law of England. *Id. ibid.*

**PROVINCIAL COURTS.** In English law. The several archi-episcopal courts in the two ecclesiastical provinces of England.

**PROVINCIALIS.** Lat. In the civil law. One who has his domicile in a province, (*provincia*.) *Dig.* 50. 16. 190.

**PROVING OF THE TENOR.** In Scotch practice. An action for proving the tenor of a lost deed. *Bell's Dict.*

**PROVISIONE VIRI.** Lat. By provision of the husband. 12 *East*, 209, arg.

**PROVISO.** Lat. In old conveyancing. Provided. A word by which a condition might be created. *Litt. sect.* 329. *Shep. Touch.* 121, 122.

**Proviso est providere præsentia et futura, non præterita.** [The office of] a proviso is to provide for the present and future, not the past. 2 *Co.* 72.

**PROVISO.** In conveyancing. A condition inserted in a deed, on the observance whereof the validity of the deed depends. *Cowell.* So called from its initial words in the old Latin forms: *Proviso semper quod*, &c.; "Provided always, that," &c. See *Proviso*, *supra*.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent. *Story*, J. 15 *Peters' R.* 445.

**PROVISO, Trial by.** In English practice. A term applied to a trial where it is brought on by a defendant, which may be done in cases where the plaintiff, after issue, neglects to proceed to trial according to the course and practice of the court. In trials of this kind, the defendant gives notice of trial, makes up the *nisi prius* record, and issues jury process. The term *proviso* is derived from a proviso contained in the *venire* or *distringas* to the sheriff, that if two writs shall come to his hands, he shall execute one of them only. 3 *Bl. Com.* 357. 2 *Tidd's Pr.* 760, 761.

**PROVISOR.** L. Lat. In old English law. A provider, or purveyor. *Spelman.* One who made interest for some ecclesiastical appointment in advance, or before there was a vacancy. See the Statute of

Provisors, 25 Edw. III. st. 6. Mr. Barrington observes that the word might not be improperly rendered a *provident looker-out.* *Obs. Stat.* 276, note [g.]

**PROVISMUS EST.** Lat. It is provided. Initial words of provisions in old statutes. *Stat. Marl.* c. 1.

**PROVOST.** L. Fr. [L. Lat. *præpositus*.] The overseer of a manor. *LL. Gul. Cong.* l. 6.

**PROVOURS.** L. Fr. Provers. *Stat. Westm.* 1, c. 15. See *Prover*.

**PROWE, Prou, Preue, Preu, Pru.** L. Fr. Profit; benefit; advantage. *Kelham.* See *Pru*.

**PROX' SEQUEN'.** An abbreviation of *proximo sequente*, (next following.) *Com.* 232.

**PROXENENTA.** Græco-Lat. [from Gr. *προξενότης*, an interpreter, or negotiator of bargains.] In the civil law. A broker; one who negotiated or arranged the terms of a contract between two parties, as between buyer and seller; one who negotiated a marriage; a match-maker. *Dig.* 50. 14. 2. *Calv. Lex. Budæus Comm. Ling. Græc.* cited *ibid.*

**PROXIES.** In English law. Yearly payments made by parish priests to their bishop or archdeacon, on account of visitation. *Cowell.*

**PROXIMUS.** Lat. Next. *Proximus est cui nemo antecedit; supremus est quem nemo sequitur.* He is next whom no one precedes; he is last whom no one follows. *Dig.* 50. 16. 92. See *Id.* 50. 16. 155.

**PROXY.** [Lat. *procurator*, q. v.] One who represents another; one who acts for, and in place of another.

One who is appointed or deputed by another to vote for him. Members of the House of Lords in England have the privilege of voting by proxy. 1 *Bl. Com.* 168.

In American law, it has been held that the members of a corporation are not entitled to vote by proxy at elections of officers, unless authorized by the act of incorporation. 2 *Green's (N. J.) R.* 233. See 1 *Paige's R.* 598. 2 *Kent's Com.* 295, note.

**PROXY.** In English law. The written appointment of a proctor in suits in the ecclesiastical courts. 4 *Chitt. Gen. Pr.* 141, 162, 164.

**PRU.** L. Fr. In old English law. Profit; benefit; advantage. *Pur le pru de soen roiaume*; for the benefit of his kingdom. *Artic. sup. Cart.*

**PRUDES HOMES.** L. Fr. In old

English law. Discreet men. A term applied to jurors. *Britt. c. 58. Prud omes*; great men. *Kelham. Prudum*; an honest man. *Id.* The two last forms are obvious corruptions.

PRUNARIUS. L. Lat. In old English law. A plum tree. *Fleta, lib. 2, c. 82, § 2.*

PRUSCHAINED. L. Fr. Next. A corruption of *prochein. Pruschanement passee*; last past. *Kelham.*

PSYCHOLOGICAL FACT. In the law of evidence. A fact which can only be perceived mentally; such as the motive by which a person is actuated. *Burr. Circ. Evid. 130, 131.*

PTOCHOTROPHUS. Græco-Lat. [Gr. *πτωχοτρόφος*, from *πτωχος*, poor, and *τρέφω*, to maintain.] In the civil law. One who had charge of maintaining the poor. *Cod. 1. 3. 46. 3, et in tit. Nov. 7, c. 1.*

PUBERTY. [Lat. *pubertas*.] The age of fourteen in males and twelve in females, when they are held fit for, and capable of contracting marriage. Otherwise called the age of consent to marriage. 1 *Bl. Com. 436. 2 Kent's Com. 78.* These periods are derived from the civil law. *Inst. 1. 22, pr. See Taylor's Civ. Law, 259.*

PUBLIC ACT or STATUTE. An universal rule or law that regards the whole community, and of which the courts of law are bound to take notice judicially and *ex officio*, without its being particularly pleaded. 1 *Bl. Com. 86. See 1 Kent's Com. 459.*

PUBLIC CORPORATION. A corporation created by government for political purposes, as a county, a city, a town or village. 2 *Kent's Com. 275. See Municipal corporation.* A bank created by the government for its own uses, and where the stock is exclusively owned by the government, is a public corporation. 2 *Kent's Com. ub. sup.*

PUBLIC HOUSE. A house intended for public purposes. A term frequently used in statutes against gaming. See 9 *Texas R. 430.* A distinction is sometimes made between a "public house" and a "public place." 26 *Alabama R. 69.* A lawyer's office, though a "public house," within the statute against gaming, is not a "public place." *Id. 135. 25 Id. 60.* A physician's office is not a "public place." *Id. 78.*

PUBLIC PLACE. See *Public house.* And see 22 *Alabama R. 15.*

PUBLIC RIVER. A river where there is a common navigation exercised; otherwise called a navigable river. 1 *Crabb's Real Prop. 111, § 106. See Navigable river.*

PUBLIC WRONGS. Violations of public rights and duties which affect the whole community, considered as a community; crimes and misdemeanours. 3 *Bl. Com. 2. 4 Id. 1.*

PUBLICANUS. Lat. In the Roman law. A farmer of the customs; a publican, (*qui publico fruitur.*) *Dig. 39. 4. 1. Id. 50. 16. 16. Calv. Lex.*

PUBLICATION. In equity practice. The making public the depositions taken in a suit, which have previously been kept private in the office of the examiner.

*Publication* is said to *pass* when the depositions are so made public, or openly shown, and copies of them given out, in order to the hearing of the cause. 3 *Bl. Com. 450.*

PUBLICATION. In the law of wills. The formal declaration made by a testator at the time of signing his will, that it is his last will and testament. 4 *Kent's Com. 515, and note.* This has been dispensed with in England, by statute 1 *Vict. c. 26.*

PUBLICATION. In the law of libel. A making public; a making known to the public. The communication of a libel to any one person is a publication. 4 *Bl. Com. 150. And see 2 W. Bl. 1037, 1038.*

PUBLICI JURIS. Lat. Public property; matter of public or common right. 2 *Kent's Com. 379. See Juris publici.*

PUBLICUM JUS. Lat. In the civil law. Public law; that law which regards the state of the commonwealth, (*quod ad statum rei Romanæ spectat.*) *Inst. 1. 1. 4.*

PUBLICUS. Lat. In the civil and old English law. Public. *Flumina omnia et portus publica sunt*; all rivers and harbours are public. *Inst. 2. 1. 2. Dig. 1. 8. 4. 1. Bract. fol. 8. Riparum quoque usus publicus est*; the use of banks of rivers is also public. *Inst. 2. 1. 4. Dig. 1. 8. 5, pr. Bract. fol. 8. Bracton makes a distinction between public and common. Id. ibid. See Common.*

PUDZELD. In old English law. Supposed to be a corruption of the Sax. *wud-geld*, (woodgeld); a freedom from payment of money for taking of wood in any forest. *Co. Litt. 233 a.*

PUE. L. Fr. A little. *Al pue et pue*; by little and little. *Kelham*.

PUERLO. Span. [from Lat. *populus*, people.] In Spanish law. People; all the inhabitants of any country or place, without distinction. *Las Partidas*, part 1, tit. 2, l. 5.

A town; township or municipality. *White's New Recop.* b. 2, tit. 1, c. 6, § 4. *Schmidt's Civ. Law*, 44, 185.

PUER. Lat. In the civil law. A child; one of the age from seven to fourteen. In this sense, the term included a girl. (*puella*.) *Dig.* 50. 16. 163. 1. *Id.* 204.

A boy, as distinguished from a girl. *Id.* *ibid.*

A servant. *Id.* *ibid.*

PUERI. Lat. [pl. of *puer*, q. v.] Children. *Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum*; children are of the blood of their parents, but the father and mother are not of the blood of the children. 3 *Co.* 40 a.

PUERITIA. Lat. [from *puer*, a child.] In the civil law. Childhood; the age from seven to fourteen. *Tayl. Civ. Law*, 259. 4 *Bl. Com.* 22.

PUET, *Puit*. L. Fr. May; might. *Il puet estre*; it may be, or might be. *Kelham*.

PUIS, *Puys*, *Pues*, *Pus*, *Puz*. L. Fr. After; since; afterwards. *Kelham*.

PUIS DARREIN CONTINUANCE. L. Fr. Since the last continuance. The name of a plea which a defendant is allowed to put in, after having already pleaded, where some new matter of defence arises after issue joined; such as payment, a release by the plaintiff, the discharge of the defendant under an insolvent or bankrupt law, and the like. 3 *Bl. Com.* 316. 2 *Tidd's Pr.* 847. 1 *Burr. Pr.* 232. So called with reference to the ancient practice of continuing a cause by formal entries on the record, the matter of defence being stated to have arisen since the last continuance of the cause. *Steph. Pl.* 64. The entry of continuances having been abolished in English practice, the plea is now commonly denominated a plea to the further maintenance of the action. *Id.* 65. A plea *puis darrein continuance* is a waiver of all previous pleas. 1 *Burr. Pr.* 424. 26 *Vermont R.* 305.

PUISNE, *Puisnee*, *Pune*. L. Fr. In English law. Younger. *Taunt avera pusne fitz que l'eyne*; the younger son shall have as much as the elder. *Britt.* c. 119. *Le pusne frere.* *Id.* *ibid.*

The title by which the justices and bar-

ons of the several common law courts at Westminster are distinguished from the chief justice and chief baron.

Later in time. "A puisne incumbrance." 3 *Rep. in Ch.* 62. "A puisne incumbrancer." 2 *P. Wms.* 495. "A puisne judgment creditor." *Id.* *ibid.*

PULSARE. Lat. In the civil law. To beat, without giving pain. See *Pulsatio*.

To accuse or charge; to proceed against at law. *Calv. Lex.*

PULSATIO. Lat. In the civil law. Beating without pain. Blackstone translates it *pulsation*. "The Cornelian law *de injuriis* prohibited *pulsation* as well as *verberation*, distinguishing *verberation*, which was accompanied with pain, from *pulsation*, which was attended with none." 3 *Bl. Com.* 120. *Dig.* 47. 10. 5. 1.

PULVIS TORMENTARIA. L. Lat. In old law. Gunpowder. *Loccen. de Jur. Mar.* lib. 3, c. 5, § 6. *Id.* lib. 3, c. 10.

PUNCTUM. Lat. A point; an indivisible point of time. See *Punctum temporis*.

A quarter of an hour, according to the old computation. Ten moments (*momenta*) made a point, (*punctum*), and four points an hour. See *Momentum*.

PUNCTUM TEMPORIS. Lat. A point of time, an indivisible period of time; the shortest space of time; an instant. *Calv. Lex.*

A point or period from which a computation of time is made. 2 *Alison's Cr. Pract.* 188.

PUNCTURED WOUND. In medical jurisprudence. A wound made with an object having a sharp cutting point; a stab. See *Tayl. Med. Jur.* 185.

PUNDBRECH. Sax. [from *pund*, pound, and *brech*, breach or breaking.] In old English law. Pound-breach; the offence of breaking a pound, (*parci fractura*.) *LL. Hen.* I. c. 40. The illegal taking of cattle out of a pound by any means whatsoever. *Cowell*.

PUNDFULDA, *Pundfald*. L. Lat. In old records. A pound-fold or pinfold; a pound. *Cowell*.

PUNIR. L. Fr. [from Lat. *punire*.] To punish. *Puni*, *puny*; punished. *Et que tort avera soit puny*; and he who shall have [done] wrong shall be punished. *Britt.* c. 68. *Punys par prison et par feyn*; punished by imprisonment and by fine. *Id.* c. 4.

PUNITIVE DAMAGES. In practice. Damages given by way of punishment;

exemplary or vindictive damages. 13 *Howard's R.* 371. In common parlance, "smart-money."

**PUPILLARITY.** [from Lat. *pupillus*, q. v.] In Scotch law. That period of minority from the birth to the age of fourteen in males, and twelve in females. *Bell's Dict.*

**PUPILLUS.** Lat. In the civil law. A male ward or infant under the age of puberty; a person under the authority of a tutor, (q. v.) *Pupilla*; a female ward. *Inst.* 1. 20. 7. *Dig.* 26. 1. 3. See *Id.* 50. 16. 239. Sometimes translated *pupil*, as in Scotch law. 2 *Swinton's R.* 532.

**Pupillus pati posse non intelligitur.** A pupil or infant is not supposed to be able to suffer, that is, to do an act to his own prejudice. *Dig.* 50. 17. 110. 2. 2 *Kent's Com.* 245.

**PUPILLARIS SUBSTITUTIO.** Lat. In the civil law. Pupillar substitution; the substitution of an heir to a pupil or infant under puberty. The substitution by a father, of an heir to his children under his power, disposing of his own estate and theirs, in case the child refused to accept the inheritance, or died before the age of puberty. *Hallifax, Anal.* b. 2, c. 6, num. 63. It was expressed in the following form: *Titius filius hæres mihi esto; et si filius mihi hæres non erit, sive hæres erit, et prius moriatur quam in suam tutelam venerit, tunc Seius hæres esto*; let Titius, my son, be my heir, and if my son will not be my heir, or if he become heir and dies before arriving at puberty, let Seius be my heir. *Inst.* 2. 16, pr. *Dig.* 28. 6.

**PUR AUTRE VIE.** L. Fr. For another's life. 2 *Bl. Com.* 120, 183.

**PUR CEO QUE.** L. Fr. [L. Lat. *pro eo quod.*] Literally, for this that; forasmuch as; inasmuch as; considering that; because. *Et pur ceo que damage purra avener à nous*; and forasmuch as damage may happen to us. *Britt. c.* 68. A common phrase in the old books, where a recital is made, or reason assigned. Sometimes written *pur coe ke*. *Conf. Cartar.* 25 Edw. I.

**PUR TANT QUE.** L. Fr. Forasmuch as; because; to the intent that. *L. Fr. Dict.* *Kelham*.

**PURALLE, Puraille, Poral, Purlieu.** L. Fr. Perambulation. *Kelham*. The borders of a forest or chase. *L. Fr. Dict.*

**PURCHASE, Purchas, Pourchas.** L. Fr. Acquisition. "*De Purchas*" is the title of the thirty-third chapter of Britton, in which he treats of the acquisition of

title to property by occupancy; as by the taking of wild beasts, fish, bees, &c.; by accession and other modes. *Al purchas de choses corporeles ne suffist nul don sauns le bail de la seisin*; for the acquisition of corporeal things, no gift is sufficient, without delivery of seisin. *Britt. c.* 33.

Purchase; acquisition of lands by conveyance. *Id. c.* 35, 36.

An estate itself, so acquired by purchase. *Ascune foitz returne purchas al donour*; sometimes a purchase shall return to the donor. *Id. c.* 37.

**PURCHASE.** [L. Fr. *purchas*; L. Lat. *perquisitio*.] In the law of real property. Acquisition of lands or tenements by any other means than by descent or inheritance.\* The possession of lands and tenements which a man hath by his own act or agreement, and not by descent from any of his ancestors or kindred. *Litt. sect.* 12. 2 *Bl. Com.* 241. *Id.* 201. 2 *Wooddes. Lect.* 150.—Acquisition by a party's own act, as distinguished from acquisition by act of law.\* Purchase properly includes every lawful mode of coming to an estate by the act of a party, as opposed to the act of law. 1 *Steph. Com.* 355. This is the definition and division adopted by Mr. Stephen, who observes that it is impossible to reduce all titles to the alternative of *descent* or *purchase*, (the division of Blackstone) and that as to *escheat*, more particularly, (which is usually classed under the head of *purchase*,) it seems clear that it is neither the one nor the other. 1 *Steph. Com.* 354, note (c.) The latter view, which has been adopted from Mr. Hargrave, seems to be fully sustained by the words of Littleton himself,—“which a man hath by *his own act or agreement.*” *Litt. sect.* 12. See 2 *Chitt. Bl. Com.* 201, notes. And it is expressly approved by Chancellor Kent. 4 *Kent's Com.* 373.

The radical meaning of the word *purchase* is well illustrated by the use of the L. Fr. *purchas*, (from which it is immediately taken) in the old books. Thus, Britton speaks of *purchasing* (acquiring) a thing by occupancy. *Purchase* may be made, he observes, by the shutting up of fish, and other wild animals, as of bees; (*purra len purchaser par enclostrure de peissons, et de autre sauvagine, sicome des ees.*) *Britt. c.* 33. See *Purchas*.

**PURCHASE.** In the law of contracts. Acquisition by a person's own act; the acquisition of property for a consideration,

consisting generally of money. See *Purchase money*.

**PURCHASE MONEY.** In the law of contracts. The consideration or price paid, or agreed to be paid, in money, by the purchaser of property, especially of real estate.

**PURCHASER.** [L. Fr. *purchasour*; L. Lat. *perquisitor*.] A person who acquires an estate in lands by his own act or agreement; a person who takes, or comes to an estate, in any other manner than by inheritance. See *Purchase*.

One who acquires property by sale, or for a consideration; a buyer, (Lat. *emptor*.)

**PURE.** [Lat. *purus*; L. Fr. *pure, purr*.] Clear; simple; unmixed or unqualified. A pure feoffment was distinguished from a conditional one. *Britt.* c. 39.

**PURE VILLENAGE.** [L. Lat. *purum villenagium*.] In old English law. That kind of villenage where the service performed was uncertain and indeterminate, the tenant not knowing at evening what service he would have to do in the morning, (*ubi sciri non poterit vespere quale servitium fieri debet mane*;) or, in other words, where he was bound to do whatever was commanded him. *Bract.* fol. 26.

**PURGARE.** Lat. In the civil law. To clean, cleanse or scour, as a ditch, trench or sewer. *Dig.* 43. 21. 1. *Fleta*, lib. 4, c. 18, § 1.

**PURGATIO.** Lat. [from *purgare*, q. v.] In old English law. A cleansing or scouring. *Fleta*, lib. 4, c. 18, § 1.

**PURGATION.** [Lat. *purgatio*, from *purgare*, to purge, clear or cleanse.] In old English law. The clearing a person's self of a crime of which he was generally suspected, and accused before a judge. *Cowell*.

*Canonical purgation* was made by the party's taking his own oath that he was innocent of the charge, which was supported by the oath of twelve compurgators, who swore they believed he spoke the truth. 4 *Bl. Com.* 368. To this succeeded the mode of purgation by the single oath of the party himself, called the oath *ex officio*, of which the modern defendant's oath in chancery is a modification. 3 *Id.* 447.

*Common or vulgar purgation*, (*vulgaris purgatio*;) was another name for the trial by ordeal, (q. v.) 4 *Id.* 342.

**PURGE.** To cleanse; to clear; to clear or relieve from some imputation. A contempt is said to be purged, when the party relieves himself from the charge.

**PURGED OF PARTIAL COUNSEL.**

In Scotch practice. Cleared of having been partially advised. A term applied to the preliminary examination of a witness, in which he is sworn and examined whether he has received any bribe or promise of reward, or has been told what to say, or whether he bears malice or ill-will to any of the parties. *Bell's Dict.*

**PURGISER.** L. Fr. To violate; to defile. *LL. Gul. Conq.* l. 14.

**PURLIEU.** L. Fr. [another, or a corrupted form of *pourallee*, a part perambulated.] In old forest law. Land adjoining to a forest, which was originally within the forest, but was afterward disafforested by *perambulation*, (*pouraille*;) whence its name. *Manwood*, 317, 318. 1 *Crabb's Real Prop.* 484, § 625. 2 *Stra.* 1119.

**PURPARLER.** L. Fr. To speak of, or speak about; to confer, or consult. *Ne compassay ne purparlay*; neither compassed nor consulted about. *Britt.* c. 22.

**PURPARS, Perpars.** L. Lat. In old records. The share of an estate after partition; purparty, (q. v.) *Paroch. Ant.* 502. *Cowell*. See *Propars*.

**PURPARTY, Purpartie.** [L. Fr. *pour parti*; L. Lat. *pro diviso*; as divided.] A share or portion; a share after division.\* That part or share of an estate which being first held in common by coparceners, is by partition allotted to any of them. *Cowell*. *Et solonc cele estente soit faite a chescun parcener la livere de sa purparty*; and according to such extent shall livery be made to each parcener of her several portion. *Britt.* c. 71. *La purparty que est allot al puisne*; the part which is allotted to the youngest. *Litt.* sect. 258.

The word is Englished *purpart*, in some of the modern books. 6 *Penn. St.* (Barr's) *R.* 234.

**PURPENSED.** L. Fr. Premeditated. *LL. Gul. Conq.* l. 1.

**PURPORT.** [L. Lat. *proportum*, from Fr. *pour*, for, and *porter*, to carry.] Meaning; import; substantial meaning; substance. The *purport* of an instrument means the substance of it as it appears on the face of the instrument, and is distinguished from *tenor*, which means an exact copy. MS. Buller, J. 2 *East's P. C.* 983. *Wharton's Am. Crim. Law*, § 342.

**PURPRESTURA.** L. Lat. In old English law. Purpresture, (q. v.) *Et qui de cetero vastum vel purpresturam sine licentia nostra, in illis [boscis] fecerint vel essartum, de vastis purpresturis et essartis*

*respondeant*; and those who, without our permission, shall make waste or purpresture in those [woods] or assart, shall answer for those wastes, purprestures and assarts. *Cart. de For.* 6 Hen. III. c. 4. See *Fleta*, lib. 2, c. 41, §§ 2, 3. *Id.* c. 52, § 25. *Id.* lib. 4, c. 6, § 3.

**PURPRESTURE.** [L. Lat. *purpræstura*, *purprestura*, *porprestura*; from L. Fr. *pourprendre*, to take away entirely.] Properly, a clandestine encroachment and appropriation of a neighbor's land; (*terræ alienæ clandestina subtractio, ejusdemque vicinæ ascriptio.*) *Spelman*. A species of nuisance by enclosing or building upon land that should be common or public. *Co. Litt.* 277 b. See *Pourpresture*.

**PURPRISUM.** L. Lat. [from L. Fr. *pourpris*, an enclosure.] In old records. A close or enclosure. *Cowell*.

The whole compass of a manor. *Id.*

**PURQ'.** L. Fr. Wherefore. A word used in old practice, at the end of pleas, arguments and judgments. Very common in the Year Books. *Purg'*, *pur default de r'ns*, *no' d'dons judgt, et prions nos dam'*; wherefore, for want of an answer, we demand judgment and pray our damages. The clause is sometimes abbreviated, *purg'*, &c.

**PURSUE.** [from Lat. *persequi*.] To follow a matter judicially, as a complaining party. In Scotch law, to prosecute criminally. 3 *How. St. Trials*, 425.

**PURSUER.** [O. Sc. *persewar*.] In Scotch law. Plaintiff; a plaintiff; a prosecutor. 1 *Kames' Equity*, 225. A literal translation of the Gr. *διωκων*, (q. v.)

**PURUS.** Lat. In old English law. Pure; clear; simple; free of any qualification or condition. *Donationum quædam libera et pura, et quædam sub conditione vel sub modo*; of gifts, one kind is free and pure, and another under a condition or qualification. *Bract.* fol. 11 b.

Absolute. *Purus idiota*; a clear or absolute idiot. 1 *Bl. Com.* 303.

**PURVELE.** L. Fr. The eye-ball. *LL. Gul. Cong.* l. 21.

**PURVEYANCE, Purveiance.** L. Fr. [from *purveier* or *purvoire*, to provide.] A provision; the provision of a statute; a statute. *En le purveiance de Merton*; in the statute of Merton. *Stat. Westm.* 1, c. 22.

**PURVEYANCE.** L. Fr. and Eng. [from *purvoire*, to provide.] In old English law. A providing of necessities for the king's house. *Cowell*. A buying at the

king's price. *Hale's Anal.* sect. viii. See *Purveyance*.

**PURVEYOR.** In old English law. An officer who provided or bought articles for the king's use, and at the king's price. Called, in the statute 36 Edw. III. c. 2, a hateful name, (*heignous nome*) and changed to that of *achator*, (q. v.) *Barringt. Obs. Stat.* 289.

**PURVIEW, Purviu.** L. Fr. [from *purveier*, to provide.] Provided. A word very commonly used in the old French statutes, to introduce a chapter or distinct provision. *Purview est que*; it is provided that. *Stat. Westm.* 1, c. 1. *Purview est ensemment*; it is provided likewise. *Id.* c. 2. See *Id.* c. 20. 1 *And.* 67. Used in modern law as an English word, to denote the enacting clause of a statute, or the entire body of a statute. See *infra*.

**PURVIEW.** [See *supra*.] The providing part of a statute; that which follows the preamble, and contains the direct and express provision of the law. Lord Coke speaks of the statute of 3 Hen. VIII. c. 12, as "standing upon a preamble and a purview." 12 *Co.* 20.—The body of an act or statute; that part of it which consists of direct and express provisions, as distinguished from provisoes and saving clauses.\* "A saving clause in a statute is to be rejected, when it is directly repugnant to the purview or body of the act." 1 *Kent's Com.* 462. See *Purveyance*.

To **PUT IN.** [Lat. *ponere*.] In practice. To place in due form before a court; to place among the records of a court. A phrase very commonly applied to the acts of parties in judicial proceedings, particularly to those of defendants. "To *put in* bail," "to *put in* a plea or answer," &c. are expressions in daily use.

To **PUT IN URE.** In old statutes. To put in practice or effect; to carry into effect. See *Ure*. Sometimes written to "put in use."

To **PUT OUT.** To open. To put out lights; to open or cut windows. 11 *East*, 372.

To **PUT UPON.** [L. Lat. *ponere super*.] In practice. To rest upon; to submit to; as a defendant "*puts himself upon* the country." See *Country*.

**PUTAGIUM.** L. Lat. In old English law. Fornication on the part of a woman. *Glanv.* lib. 7, c. 12. *Bract.* fol. 88. *Spelman.* *Fleta*, lib. 1, c. 15, § 4.

**PUTATIO.** Lat. In the civil law. A pruning or lopping of trees. *Inst.* 4. 3. 5.

PUTATIVE. [L. Lat. *putativus*, from *putare*, to suppose.] Reputed; supposed; commonly esteemed. *Pater pueri* putativus; the reputed father of the child. *J. Brompt.* p. 909. *Cowell.*

Applied, in Scotch law, to creditors and proprietors. 2 *Kames' Equity*, 105, 107, 109.

PUTEUS. Lat. In old English law. A well. *Fleta*, lib. 4, c. 27, § 8.

PUYR. L. Fr. Pure. *Chartre de puyr fessment.* *Britt.* c. 51.

PÛYS. L. Fr. [from Lat. *puteus*, q. v.] A well. *Britt.* c. 1.

PYKERIE. Sc. In old Scotch law. Petty theft. 2 *Pitc. Crim. Trials*, 43.

## Q.

Q. A letter used in the Roman law, in various abbreviations. Q. D. E. R. F. P. D. E. R. I. C. for *Quid de ea re fieri placeret, de ea re ita censuerunt*, (what it might be their pleasure to have done on that subject, on that subject they have so determined.) An abbreviation used in writing out decrees of the senate. *Tayl. Civ. Law*, 576. *Calv. Lex.*

QAR. L. Fr. For. *Fet Assaver*, § 45.

Q'D. A contraction of *quod*, in old pleading. 1 *Instr. Cler.* 12.

QUA. L. Lat. As. "The debt, *quà* debt, was instantly due." Lord Ellenborough, 8 *East*, 433. "Interest, *quà* interest." Lord Kenyon, 1 *Id.* 195. "The judge, *quà* judge, cannot know." *Vaugh.* 147.

QUACUNQUE VIA DATA. Lat. Whichever way given; in whichever view of the case. Lord Mansfield, 2 *Burr.* 980. Story, J. 2 *Gallison's R.* 26. 1 *Id.* 637. 11 *Metcalf's R.* 276. *Shep. Touch.* 367.

QUADRAGESIMA. Lat. The fortieth. The first Sunday in Lent is so called because it is about the fortieth day before Easter. *Cowell.*

QUADRAGESIMS. The third volume of the year books of the reign of Edward III. So called, because beginning with the fortieth year of the reign. *Crabb's Hist. Eng. Law*, 327. *Hale's Hist. Com. Law*, c. 8.

QUADRANS. Lat. In old English law. A farthing; a fourth part or quarter of a penny.

Before the reign of Edward I. the smallest coin was a sterling or (silver) penny marked with a cross or traverse strokes, by

the guidance of which a penny, upon occasion, might be cut in halves for a half penny, or into quarters for farthings or fourth parts, till, to avoid the fraud of unequally cutting, King Edward I. A. D. 1279, coined half pence and farthings in round distinct pieces. *Cowell. Spelman*, voc. *Denarius*, citing *Stow*, p. 306, where some curious old verses are given.

QUADRANTALIS. L. Lat. [from *quadrans*, q. v.] In old English law. Of the value or price of a quarter or farthing. *Panis quadrantal*; the farthing loaf. *Fleta*, lib. 2, c. 9. Britton, in the parallel passage, has the word *ferlinges*, (q. v.) *Britt.* c. 30. But the word is not taken notice of either by Spelman or Cowell.

QUADRANTATA TERRÆ. L. Lat. The fourth part of an acre, according to Cowell. But Spelman makes it to be the fourth part of a yard-land. *Spelman*, voc. *Fardella.*

QUADRARIUM. L. Lat. In old records. A quarry, or stone-pit. *Paroch. Ant.* 208. *Cowell.*

QUADRIENNIUM. Lat. [from *quatuor*, four, and *annus*, year.] The four years' course of studying the civil law, before arriving at the code or imperial constitutions. *Inst. proœm.* *Tayl. Civ. Law*, 39.

QUADRIENNIUM UTILE. Lat. In Scotch law. The term of four years allowed to a minor, after his majority, in which he may by suit or action endeavor to annul any deed to his prejudice, granted during his minority. *Bell's Dict. Whishaw.*

QUADRIPARTITE. Divided into four; of four parts. A term applied, in conveyancing, to an indenture executed in four parts.

QUADRUPLICATIO. Lat. In the civil law. A pleading on the part of a defendant, following the *triplicatio*, (q. v.) and corresponding to the *rebutter* at common law. The third pleading on the part of the defendant. *Inst.* 4. 14. 3. 3 *Bl. Com.* 310. Called, in Scotch law, *quadruply.* 3 *How. St. Trials*, 78.

Bracton adopts the term, though he gives the pleading itself a different place in the series, making it the third pleading on the part of the plaintiff, corresponding with the *surrejoinder* of common law pleading. *Bract.* fol. 400 b. This is occasioned by his omission of the *duplicatio*, which, in the civil law series, as given in the Institutes, followed immediately after the *replicatio*, though, in the Digests, the

*duplicatio* is omitted. *Dig.* 44. 2. 2. 3. The same omission occurs in *Fleta*. *Lib.* 6, c. 36, § 10.

**Quæ ab hostibus capiuntur, statim capientium fiunt.** Things which are taken from enemies immediately become the property of the captors. 2 *Burr.* 693. See *Inst.* 2. 1. 17. *Grotius de Jur. Bell.* lib. 3, c. 6, § 12. In the Institutes, here cited, the reading is, *Quæ ex hostibus capimus, jure gentium statim nostra fiunt.* What we take from enemies, by the law of nations immediately becomes ours. In the Digests, the reading is, *Quæ ex hostibus capiuntur, jure gentium statim capientium fiunt.* Things which are taken from enemies, by the law of nations immediately become the property of the captors. *Dig.* 41. 1. 5. 7. *Statim*, however, is held to mean "when the battle is over;" when all immediate pursuit has ceased, and all hope of recovery is gone. Lord Mansfield, 2 *Burr. ub. sup.* See *Statim*.

**Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest.** An institution which was at the beginning of no use or force, cannot acquire force from after matter. *Dig.* 50. 17. 210. See *Quod ab initio, &c.*

**Quæ accessionum locum obtinent, extinguuntur cum principales res peremptæ fuerint.** Things which hold the place of accessories are extinguished when the principal things are destroyed. 2 *Poth. Oblig.* 202. *Broom's Max.* 373.

**Quæ ad unum finem loquuta sunt non debent ad alium detorqueri.** Words which are spoken to one end, [or with reference to one object,] ought not to be perverted to another. 4 *Co.* 14 a. The sense of words charged as slanderous is to be collected from the cause and occasion of speaking them. *Id. ibid.*

**Quæ cohærent personæ a persona separari nequeunt.** Things which cohere to, or are closely connected with the person, cannot be separated from the person. *Jenk. Cent.* 28, case 53. Applied to the joinder of husband and wife as parties to actions. *Id. ibid.*

**Quæ communi lege derogant stricte interpretantur.** [Statutes] which derogate from the common law are strictly interpreted. *Jenk. Cent.* 221, case 72.

**Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam.** Things which are introduced contrary to the reason of law ought not to be drawn

into a precedent. 12 *Co.* 75. Precedents which are utterly against law and reason are void. *Id. ibid.*

**Quæcunque intra rationem legis inveniuntur, intra legem ipsam esse judicantur.** Things which are found within the reason of a law are supposed to be within the law itself. 2 *Inst.* 689.

**Quæ dubitationis causa tollendæ inseruntur, communem legem non lædunt.** [Clauses] which are inserted [in an instrument] for the purpose of removing doubt, do not affect the common law. *Co. Litt.* 205 a. *Litt. sect.* 331. In the Digests, the maxim reads, *Quæ dubitationis tollendæ causa contractibus inseruntur, jus commune non lædunt.* *Dig.* 50. 17. 81.

**QUÆ EST EADEM.** L. Lat. [L. Fr. *que est le mesme*, which is the same.] In old pleading. Formal words used in pleas in actions of trespass, the defendant alleging that the plaintiff gave him leave to enter on the land, and that he entered accordingly, *quæ est eadem transgressio*, (*which is the same trespass*) of which the plaintiff complains. *Hollhouse*.

**Quæ incontinenti fiunt inesse videntur.** Things which are done incontinently [or simultaneously with an act,] are supposed to be inherent [in it; to be a constituent part of it.] *Co. Litt.* 236 b. The very elliptical form of this maxim renders a close translation difficult. It seems to be condensed from Bracton's *pacta quæ incontinenti donationi opponantur,—in esse videntur.* *Bract.* fol. 16 b.

**Quæ in partes dividi nequeunt, solida a singulis præstantur.** Things [or services] which cannot be divided into parts, are rendered entire severally, [that is, by each several feoffee.] 6 *Co.* 1 a, *Bruerton's case.* *Co. Litt.* 149 b. A maxim applied to the apportionment of rents and services.

**Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt.** Things which are done between others (or third parties) ought not to injure a person, but may benefit him. *Branch's Pr.* See *Res inter alios, &c.*

**Quæ in testamento ita sunt scripta ut intelligi non possint, perinde sunt ac si scripta non essent.** Things which are so written in a will that they cannot be understood, are the same as if they had not been written at all. *Dig.* 50. 17. 73. 3.

**Quæ legi communi derogant non sunt trahenda in exemplum.** Things which dero-

gate from the common law are not to be drawn into precedent. *Branch's Pr.*

**Quælibet concessio fortissime contra donatorem interpretanda est.** Every grant is to be interpreted most strongly against the grantor. *Co. Litt.* 183 a. Every man's grant shall be taken by construction of law most forcible against himself. *Id.*

**Quælibet jurisdictio cancellos suos habet.** Every jurisdiction has its limits. *Jenk. Cent.* 139, case 85.

**QUÆ NIHI FRUSTRA.** L. Lat. Which (does or requires) nothing in vain; which requires nothing to be done, that is to no purpose. 2 *Kent's Com.* 53.

**Quæ non valeant [prosunt] singula, juneta juvant.** Things which may have no force singly, united have an effect. *Branch's Pr.* 3 *Bulstr.* 132. 1 *Ventr.* 278. Words in an instrument which are ineffective when taken singly, operate when taken conjointly. *Broom's Max.* 294, [450.]

**QUÆ PLURA.** L. Lat. (What more.) In old English practice. A writ which lay where an inquisition had been made by an escheator in any county, of such lands or tenements as any man died seised of, and all that was in his possession was imagined not to be found by the office; the writ commanding the escheator to inquire *what more* (*quæ plura*) lands and tenements the party held on the day when he died, &c. *F. N. B.* 255 A. *Reg. Orig.* 293. *Cowell.*

**Quæ propter necessitatem recepta sunt, non debent in argumentum trahi.** Things which are admitted on the ground of necessity ought not to be drawn into question. *Dig.* 50. 17. 162.

**Quæ præter consuetudinem et morem majorum fiunt, neque placent neque recta videntur.** Things which are done contrary to the custom of our ancestors, neither please nor appear right. 4 *Co.* 78.

**QUÆRAS** de dubiis, legem bene discere si vis:  
Quærere dat sapere quæ sunt legitima vere.

Inquire about doubtful points, if you would learn the law well; to inquire into, is the way to know what is really lawful, [what the law really is.] *Litt. sect.* 443.

**QUÆRE.** Lat. Inquire; see; examine; look into. A word constantly used in the books to denote a doubtful point, or to direct further inquiry into a point or matter stated. *Perkins*, ch. 4, s. 296. *Id.* ch. 5, s. 350. *Quære de hoc*; inquire of this, or about this. *Id.* ch. 9,

s. 585. *Quære inde.* *Dyer*, 24. *Tamen quære*; however, inquire. *Perk.* ch. 1, ss. 44, 45, 105, 106. *Ideo quære*; therefore inquire. *Id.* ch. 1, s. 39; ch. 4, s. 261. *Ideo quære certitudinem inde*, &c.; therefore inquire into the certainty thereof. *Id.* ch. 4, s. 269. *Quære, quid inde venit*; quære what became of it. 6 *Mod.* 253. The word is used also in the statement of questions. *Sed quære si tenens elongaverit*; but quære if the tenant should have eloiigned. *Fleta*, lib. 2, c. 45, § 3.

A question or doubt. "It was a quære." 12 *Mod.* 18.

**QUÆRENS.** L. Lat. In old practice. A plaintiff; the plaintiff. See *Querens*.

**QUÆRENS NIHI CAPIAT PER BILLAM.** L. Lat. The plaintiff shall take nothing by his bill. A form of judgment for the defendant. *Latch*, 133.

**QUÆRENS NON INVENIT PLEGIUM.** L. Lat. The plaintiff did not find a pledge. A return formerly made by a sheriff to a writ requiring him to take security of the plaintiff to prosecute his claim. *Cowell.*

**Quæ rerum natura prohibentur nulla lege confirmata sunt.** Things which are forbidden by the nature of things are [can be] confirmed by no law. *Dig.* 50. 17. 188. 1. *Branch's Pr.* Positive laws are framed after the laws of nature and reason. *Finch*, L. 74.

**QUÆRITUR** ut crescent tot magna volumina legis?  
In promptu causa est,—crescit in orbe dolus.

The question is asked, why the volumes of the law multiply so fast? The reason is at hand,—fraud increases in the world. 3 *Co.* 82 a, *Twyne's case*. "To one who marvelled what should be the reason that acts and statutes are continually made at every parliament, without intermission and without end, a wise man made a good and short answer, both which are well composed in verse." (See the verse just given.) *Id. ibid.*

**Quæ sunt minoris culpæ sunt majoris infamiæ.** [Offences] which are of a lower grade of guilt are of a higher degree of infamy. *Co. Litt.* 6 b. Lord Coke here alludes to the infamous punishments of pillory, branding and cropping, which were formerly inflicted on minor offences.

**QUÆSTIO.** Lat. [from *quærere*, to inquire.] In the civil law. The question; the torture; inquiry or inquisition by inflicting the torture; bodily torment inflicted in order to extort the truth, (*ad eru-*

*dam veritatem.*) *Dig.* 47. 10. 15. 41. *Id.* 48. 18.

**QUÆSTOR.** Lat. [from *quærere*, to seek or collect.] A Roman magistrate whose office it was to collect the public revenue, (*qui publicas pecunias conquirebat.*) *Varro de L. L.* iv. 14. *Dig.* 1. 13. *Cod.* 1. 30.

**QUÆSTOR SACRI PALATII.** Lat. Quæstor of the sacred palace. An officer of the imperial court at Constantinople, with powers and duties resembling those of a chancellor, (*cancellarius.*) *Calv. Lex.*

**QUÆSTUS.** Lat. In old English law. Acquisition; purchase. See *Questus*.

**QUALE JUS.** Lat. (What kind of right.) In old English law. A judicial writ which lay where a man of religion, (as an abbot, &c.) had judgment to recover land, before execution was issued; commanding the sheriff to inquire *what right* the plaintiff had to recover, and what damages he had sustained. *Reg. Jud.* 8, 16, 17. The object of the writ was to ascertain whether the recovery had, or had not been collusive, in order to evade the statute of mortmain.

**QUALIFIED FEE.** In English law. A fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a *base fee*. 2 *Bl. Com.* 109. 1 *Steph. Com.* 225. An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. 4 *Kent's Com.* 9. See *Base fee*.

**QUALIFIED PROPERTY.** A temporary or special interest in a thing, liable to be totally divested on the happening of some particular event. 2 *Kent's Com.* 347. It is a species of interest growing out of possession, and arising either from the nature of the thing or chattel possessed, as in the case of animals *feræ naturæ*; or from a transfer of possession from the general owner, as in case of bailment, pledge or distress. 2 *Bl. Com.* 391—396. 2 *Steph. Com.* 73. 2 *Kent's Com.* 347—350.

**QUALITER.** Lat. In what manner. A word used in old writs. *Fleta*, lib. 2, c. 64, § 19.

**QUAMDIU.** Lat. As long as; so long as. A word of limitation in old conveyances. *Co. Litt.* 235 a. 10 *Co.* 41 b. *Shep. Touch.* 125.

**QUAMDIU SE BENE GESSERIT.** L. Lat. As long as he shall conduct himself well; during good behaviour. A term used to express the tenure of office, especially of judicial offices. 1 *Bl. Com.* 267. By the statute 13 Will. III. c. 2, it was enacted that the commissions of the judges in the superior courts should be made, not as formerly, *durante bene placito*, (during pleasure,) but *quamdiu bene se gesserint*, as long as they shall conduct themselves well. *Id. ibid.* The clause is often used in old letters patent. *Cowell.*

**Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum.** Although a thing may not be bad in itself, yet, if it is of bad example, it is not to be done. 2 *Inst.* 564.

**Quamvis lex generaliter loquitur, restringenda tamen est, ut, cessante ratione, ipsa cessat.** Although a law speaks generally, yet it is to be restrained, so that when its reason ceases, it should cease also. 4 *Inst.* 330.

**QUANDO ACCIDERINT.** L. Lat. (When they shall happen, or come to hand.) In practice. The technical name of a judgment entered against an executor or administrator, where it is directed to be satisfied out of assets which may *afterwards* come to the hands of the defendant. 2 *Arch. Pr.* 147. 2 *Burr. Pr.* 97.

**Quando abest provisio partis, adest provisio legis.** When the provision of the party is wanting, the provision of the law is at hand. 6 *Vin. Abr.* 49.

**Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud.** When any thing is commanded, every thing by which it can be accomplished is also commanded. 5 *Co.* 115 b, *Foliam's case*. When the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command. *Broom's Max.* 201, [366.] Thus, constables, whose duty it is to see the peace kept, may, when necessary, command the assistance of others. *Id. ibid.* So a sheriff may summon the *posse comitatus* for a similar purpose. 5 *Co. ub. sup.*

**Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.** When any thing is prohibited, every thing by which it is reached is prohibited also. 3 *Inst.* 48. That which cannot be done directly, shall not be done indirectly. *Broom's Max.* 202, [367.]

**Quando aliquid prohibetur fieri ex directo,**

prohibetur et per obliquum. When any thing is prohibited from being done directly, it is prohibited indirectly also. *Co. Litt.* 223 b. *Wingate's Mar.* 618, max. 159.

Quando aliquis aliquid concedit, concedere videtur et id sine quo res uti non potest. When a person grants any thing, he is supposed to grant that also without which the thing cannot be used. 3 *Kent's Com.* 421. When the use of a thing is granted, every thing is granted by which the grantee may have and enjoy such use. *Id. ibid.*

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia. When a deed contains a general clause, and afterwards descends to special words which are agreeable to the general clause, the deed is to be interpreted according to the special words. 8 *Co.* 154 b, *Altham's case.*

Quando de una et eadem re dno onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur. When there are two persons liable for one and the same thing, one of them, in case of default of the other, shall be charged with the whole. 2 *Inst.* 277.

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitatur, et secundum alteram [aliam] utilis sit, tunc facienda est relatio ad illam ut valeat dispositio. When a disposition [in a will] may be referred to two things, so that according to one reference it is destroyed, and according to the other it is effectual, such a reference must be made that the disposition shall have effect. 6 *Co.* 76 b, *Sir George Curson's case.*

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit lex actum originalem. When different acts are required to the formation of any estate, the law chiefly regards the original act. 10 *Co.* 49 a, *Lampet's case.* When to the perfection of an estate or interest, divers acts or things are requisite, the law has more regard to the original act, for that is the fundamental part on which all the others are founded. *Id. ibid.*

Quando [eum] duo jura concurrunt in una persona, æquum est ac si essent in diversis. When two rights meet in one person, it is the same thing as if they were in different persons. 4 *Co.* 118 a, arg. *Shep. Touch.*

34. That is, they still remain separate rights, and do not merge together into one.

Quando lex aliquid alieni concedit, concedere videtur et id sine quo res ipsa esse non potest. When the law grants any thing to any one, it is considered to grant that also without which the thing itself cannot exist. 5 *Co.* 47 a, *Franklin's case.* When the law grants a thing to any one, it is considered to grant him also whatever is essential to constitute it, or is necessarily incident to it. The last clause of this maxim is sometimes varied thus: et id per quod devenitur ad illud; the means of attaining it. 1 *Kent's Com.* 464. The law is well settled that whenever a power is given by a statute, every thing necessary to the making it effectual is given by implication. *Douglas, C. J.* 2 *Florida R.* 597.

Quando lex aliquid alieni concedit, omnia incidentia tacite conceduntur. When the law grants any thing to any one, all the incidents [of such thing] are tacitly granted; [are granted by implication.] 2 *Inst.* 326. *Hob.* 234. The grant of a thing carries all things included, without which the thing granted cannot be had. *Id.*

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. When a law is special, but its reason [or object] general, the law is to be understood generally. 2 *Inst.* 83.

Quando licet id quod majus, videtur et licere id quod minus. When the greater is allowed, the less seems to be [is considered as] allowed also. Where a man may devise the land itself, it seems he may devise the trees or grass growing upon the land. *Shep. Touch.* 429.

Quando plus fit quam fieri debet, videtur etiam illud [ipsum] fieri quod faciendum est. When more is done than ought to be done, that which is to be done is still considered to be done. 8 *Co.* 85 a, *Sir Richard Pexhall's case.* Where more is done [under a power] than ought to be done, that portion for which there was authority shall stand, and the act shall be void *quoad* the excess only. *Broom's Max.* 76, [131.]

Quando res non valet ut ago, valet quantum valere potest. When a thing is of no effect as I do it, it shall have effect as far as [or in whatever way] it can. *Lord Mansfield, C. J.* *Cowp.* 600. Deeds are to be so construed as to operate according to the intention of the parties, if by law they may; and if they cannot in one form, they

shall operate in that which by law will effectuate the intention. *Broom's Max.* 238, 239, [415.] 2 *Smith's Lead. Cas.* 294.

**Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum.** When the words of a statute are special, but the reason or object of it general, the statute is to be construed generally. 10 *Co.* 101 b, *Beaufage's case*.

**QUANTITY**, as applied to an estate, denotes the duration and extent of the interest which the tenant has in the tenement; as whether for years, for life or in fee. 2 *Bl. Com.* 103.

**QUANTUM MERUIT.** Lat. (As much as he deserved.) In pleading. The common count in an action of *assumpsit* for work and labor, founded on an implied *assumpsit* or promise on the part of the defendant to pay the plaintiff *as much as he reasonably deserved* to have for his labor. 3 *Bl. Com.* 161. 1 *Tidd's Pr.* 2. So termed from the emphatic words in the old Latin forms. Under the late pleading rules of the English courts, this count, and the *quantum valebant (infra)* are considered as virtually abolished. 1 *Chitt. Pl.* 288.

**QUANTUM VALEBANT.** Lat. (As much as they were worth.) In pleading. The common count in an action of *assumpsit* for goods sold and delivered, founded on an implied *assumpsit* or promise, on the part of the defendant, to pay the plaintiff *as much as the goods were reasonably worth*. 3 *Bl. Com.* 161. 1 *Tidd's Pr.* 2. So termed from the emphatic words in the old Latin forms, though *valerent* (should be worth) was the word actually used in laying the promise; (*super se assumpsit, et eidem T. adtunc et ibidem fideliter promisit, quod ipse idem W. tantas denariorum summas quantas (quantum) bona mercimonia et merchandizæ illa, tempore venditionis et deliberationis eorumdem, rationabiliter VALE-* *RENT, eidem T. cum inde postea requisitus esset, bene et fideliter solvere et contentare vellet.*) *Towns. Pl.* 416. *Valebant* was used in the averment that followed, that the goods *were worth* a certain price. *Id. ibid.*

**QUARANTINE**, properly **QUARENTINE** or **QUARENTENE**. [L. Lat. *quarentena*; L. Fr. *quarentine*.] The period of forty days. 2 *Bl. Com.* 135.

The privilege of a widow to continue in the chief house of her husband for *forty days* after his death. *Id. ibid.* See *Quarentine*.

A period of time originally consisting of *forty days*, but now of variable length, during which a vessel from certain coasts or ports, said or supposed to be infected with certain diseases, is not allowed to communicate with the shore, except under particular restrictions. *Brande*. The word is derived by this author from the Ital. *quaranto*, forty.

**QUARE.** Lat. Wherefore; why. A formal word in various old writs, especially writs of trespass. *Reg. Orig.* 93—112. See *Fleta*, lib. 2, c. 65, §§ 11, 12.

**QUARE CLAUSUM FREGIT.** L. Lat. (Wherefore he broke the close.) In pleading. The technical name of the action of trespass for an illegal entry upon land or premises. So called from the emphatic words of the original writ by which it was formerly commenced; the defendant being summoned to *show wherefore he broke the plaintiff's close*, (*ostensurus quare clausum querentis fregit.*) *Reg. Orig.* 93 b, 96, 99. 3 *Bl. Com.* 209, 281.

**QUARE EJECIT INFRA TERMINUM.** L. Lat. (Wherefore he ejected within the term.) In old practice. A writ which lay for a lessee where he was ejected before the expiration of his term, in cases where the wrong-doer or ejector was not himself in possession of the lands, but his feoffee, or another claiming under him. 3 *Bl. Com.* 199, 206. *Reg. Orig.* 227. *F. N. B.* 197 S.

**QUARE IMPEDIT.** L. Lat. (Wherefore, or why he hinders.) In English practice. A writ or action which lies for the patron of an advowson, where he has been disturbed in his right of patronage; so called from the emphatic words of the old form, by which the disturber was summoned to answer *why he hinders* the plaintiff. 3 *Bl. Com.* 246, 248. 3 *Steph. Com.* 661. *Reg. Orig.* 30 b. *F. N. B.* 32 E. *Fleta*, lib. 5, c. 16. It is one of the few real actions still retained in use.

**QUARE INCUMBRAVIT.** L. Lat. (Wherefore, or why he incumbered.) In old English practice. A writ or action which lay against a bishop, after judgment in an action of *quare impedit*, where he had *incumbered* the church with a clerk pending the action. 3 *Bl. Com.* 248. *Reg. Orig.* 32 b. *F. N. B.* 48 D. 3 *Steph. Com.* 661, note (q.)

**QUARE NON ADMISIT.** L. Lat. (Wherefore, or why he did not admit.) In English practice. A writ which lies to

recover damages against a bishop for refusing to present the clerk of the prevailing party in an action of *quare impedit*, after being directed to do so by the writ of *ad admittendum clericum*. 3 *Bl. Com.* 250. 3 *Steph. Com.* 665, note (l.) *Reg. Orig.* 32. *F. N. B.* 47 C.

**QUARE OBSTRUXIT.** L. Lat. (Wherefore he obstructed.) In old English practice. A writ which lay for one who, having a liberty to pass through his neighbour's ground, could not enjoy his right because the owner had straitened or obstructed it, (*quare obstruxit vel coarctavit*.) *Cowell. Fleta*, lib. 4, c. 27, § 2.

**QUAREL, Querel.** L. Fr. [from Lat. *querela*, q. v.] In old English law. A complaint, or suit. *Stat. Westm.* 1, c. 28. 2 *Inst.* 213.

**QUARENTENA.** L. Lat. [L. Fr. *quarentyne*; from *quarante*, forty.] In Saxon and old English law. A furlong; a quantity of land containing forty perches. *Chart. Withlaf. Reg. Mercior.* apud *In-gulf. LL.* Hen. I. c. 17. *Spelman. Co. Litt.* 5 b.

**QUARENTENA, (or QUARENTENA MULIERUM.)** L. Lat. In old English and Scotch law. Quarantine; widow's quarantine. *Item necessaria habet uxor, usque ad quarentenam, nisi ei fuerit sua dos citius assignata*; also the wife has her necessities during her quarantine, unless her dower have been sooner assigned her. *Bract.* fol. 60 b. *Fleta*, lib. 2, c. 57, § 10. *Infra* quarentenam,—*infra* quadraginta dies; within the quarantine,—within the forty days. *Bract.* fol. 96. *Dotes et quarentenam.* *Stat. Rob.* III. *Reg. Scot.* c. 30, [c. de viduis, 22.] *Skene de Verb. Sign.*

**QUARENTINE, Quarantine.** L. Fr. and Eng. [from Fr. *quarante*, forty; L. Lat. *quarentena, quarentina*.] A space of forty days allowed a widow after the death of her husband, to remain in his chief messuage or mansion-house, during which time her dower shall be assigned her. This privilege was first given by *Magna Charta*, and the provision is still the law in England, and probably in all the United States. *Mag. Chart.* c. 7. *Britt.* c. 103. *Co. Litt.* 34 b. 2 *Bl. Com.* 135. 1 *Steph. Com.* 253. 4 *Kent's Com.* 61.

The word *quarantine* itself is not in *Magna Carta*. "*Maneat [vidua] in capitali mesuagio ipsius mariti sui per quadraginta dies post obitum mariti sui, infra quos*

*assignetur ei dos sua.*" *Mag. Cart.* 9 Hen. III. c. 7. In King John's charter, it reads: "*Maneat in domo mariti sui per quadraginta dies post mortem ipsius, infra quos assignetur ei dos sua.*" C. 7. In the original articles of the charter, it reads: "*Maneat in domo sua per xl dies post mortem ipsius, et infra terminum illum assignetur ei dos.*" C. 4.

This word is written by Blackstone *quarantine*, which is the form adopted in most of the modern books. 2 *Bl. Com. ub. sup.* 4 *Kent's Com. ub. sup.* Lord Coke, however, writes it *quarentine*, which, doubtless, was its original form, as is shown by the use of the word in the law French of Britton, and the invariable occurrence of *quarentena*, in the Latin of Bracton, Fleta and the Register. See *Quarentena. Mansionnes—ou eles purrount demorer lour* quarantines; houses where they may stay their quarantines. *Britt.* c. 103.

**QUARESME.** L. Fr. [from Lat. *quadragesima*.] In old English law. Lent. *Stat. Westm.* 1, c. 51. *Yearb. M.* 7 Edw. III. 14.

**QUARREL.** [L. Fr. *quarel*; Lat. *querela*.] In old English law. A complaint or plaint; an action; a cause of action; a controversy or debate. By the release of all quarrels, not only actions depending in suit, but causes of action and suit also were released. 8 *Co.* 153 a, *Altham's case. Termes de la Ley.*

**QUARTA, Quartalis, Quartalium.** L. Lat. [from *quartus*, fourth.] In old European law. A fourth part; a quarter. *Spelman.*

In old English law. A quart; the fourth part of a gallon. *Jalones, potellos et quartas*; gallons, pottles and quarts. *Fleta*, lib. 2, c. 12, § 14. Anciently, a peck; the fourth part of a bushel. *Spelman. Bussellos, dimidios et quartas*; bushels, halves and quarts, (quarters.) *Fleta*, lib. 2, c. 12, § 13.

**QUARTER.** L. Fr. In old English law. The fourth part of a day. *Ascun purra etre seisi en le jornaunt, de ascun tenement en son demeyne come de fee, et avaunt midy, en mesme le quarter, le purra il doner*; one may be seised in the morning of any tenement in his demesne, as of fee, and before noon, in the same quarter, he may give it. *Britt.* c. 80. The division of a day into four quarters is also mentioned by Bracton. *Bract.* fol. 264.

**QUARTER OF A YEAR** consists but

of ninety-one days, the additional six hours not being regarded. *Co. Litt.* 135 b.

**QUARTER SALES.** In New-York law. One quarter of purchase money. A name given to covenants in a lease in fee, that in case the lessee should sell the lands, he or the purchaser should pay to the lessor, his heirs, &c., one fourth of the purchase money it should be offered for. See 2 *Selden's R.* 467. A species of fine for alienation.

**QUARTER SEAL.** In Scotch law. A seal kept by the director of the chancery; in shape and impression the fourth part of the great seal, and called in statutes the testimonial of the great seal. *Bell's Dict.*

**QUARTER SESSIONS,** (or GENERAL QUARTER SESSIONS OF THE PEACE.) In English law. A criminal court held before two or more justices of the peace, (one of whom must be of the quorum,) in every county, once in every quarter of a year. 4 *Bl. Com.* 271. 4 *Steph. Com.* 335.

**QUARTERING.** In English criminal law. The dividing a criminal's body into quarters, after execution. A part of the punishment of high treason. 4 *Bl. Com.* 93.

**QUARTERIUM.** L. Lat. In old English law. A quarter. A measure of grain, consisting of eight bushels, struck. *Spelman. Cowell.* The London quarter (*quartarium Londini*) was fixed by Magna Charta, (9 Hen. III. c. 25,) as the standard measure of the kingdom. See *Fleta*, lib. 2, c. 9; c. 12, § 1.

The quarter of a year, (*quartarium anni*.) *Fleta*, lib. 2, c. 64, §§ 9, 10, 21.

**QUARTO DIE POST.** L. Lat. (On the fourth day after.) In practice. The name given to the fourth day inclusive after the return of a writ, upon which, if a defendant appeared, it was sufficient. 3 *Bl. Com.* 278. See *Fleta*, lib. 2, c. 65, § 11. Hence called the *appearance* day, and anciently, *dies amoris*, (day of indulgence.) 1 *Tidd's Pr.* 107. *Crabb's Hist.* 218. It was the first day in full term, on which the courts sat for the dispatch of business. 3 *Bl. Com. ub. sup.* 1 *Tidd's Pr. ub. sup.* A similar period of four days was allowed in the civil and canon law, and formerly in equity practice. *Gilbert's For. Rom.* c. 3.

**QUASH.** [L. Lat. *quassare*, *cassare*; L. Fr. *quasser*.] In practice. To overthrow; to abate; to annul; to make void, (*cassum facere*.) *Spelman.* 3 *Bl. Com.* 303. To set aside a writ or other proceed-

ing for some formal defect, not reaching to the merits of the case. The terms "quash" and "dismiss" were distinguished in 24 *Mississippi R.* 462.

**QUASI.** Lat. As if; as it were; as though. A term derived from the civil law, and applied to acts, persons, proceedings, estates, &c. where they partake so far of the nature of other acts, &c. as to be assigned to the same general head, though not strictly and properly belonging to it. See *Tayl. Civ. Law*, 67. It is, in other words, used to denote *resemblance with a difference*, and may be rendered in English by the expressions "species of," "improper," and sometimes, "implied," "presumed," &c. See *infra*. Pothier calls it an adverb of impropriety, (*adverbium improprietatis*.) *Poth. Oblig.* part 2, ch. 3, art. 8, sect. 2.

**QUASI CONTRACT.** [Lat. *quasi contractus*.] In the civil law. An implied contract; an improper contract; a contract in which the obligation was founded on the consent of the parties, not actually expressed, but *implied* or presumed by law. *Hallifax, Anal.* b. 2, c. 19, num. 1. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 28, § 966. It was an intermediate head under which those obligations were ranked, which, while they could not properly be considered as arising out of *contract*, could not, on the other hand, be said to originate in *wrong* or malfeasance. *Inst.* 3. 28, pr. See *Civil Code of Louis.* art. 2272.

**QUASI DELICT,** (or OFFENCE.) [Lat. *quasi delictum*.] In the civil law. An improper offence; an unlawful act, done through negligence, without ill design. *Hallifax, Anal.* b. 2, c. 26, num. 1. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 5, § 1112. It was the head under which those acts were ranked which could not be said to arise either out of pure malfeasance, or contract. *Inst.* 4. 5, pr. See *Civ. Code of Louis.* art. 2294.

**QUASI DEPOSIT.** In the law of bailment. A kind of implied or involuntary deposit, which takes place where a party comes lawfully to the possession of another person's property, by finding it. *Story on Bailm.* § 85.

**QUASSER.** L. Fr. To quash. *Quasse*; quashed. *Yearb.* T. 10 Edw. III. 12. M. 8 Hen. VI. 30.

**QUATER COUSIN.** "The very name of *cater*, or (as it is more properly wrote) *quater* cousins, is grown into a proverb, to

express, by way of irony, the last and most trivial degree of intimacy and regard." *Blackst. Law Tr.* 6.

**QUATUOR PEDIBUS CURRIT.** L. Lat. Runs upon four feet; runs upon all fours. A term used to denote an exact correspondence. See *All fours*. *Nullum simile quatuor pedibus currit*. No simile holds in every thing. *Co. Litt.* 3 a. "It does not follow that they (a trust and an equity of redemption) run *quatuor pedibus*." 1 *W. Bl.* 145.

**QUAY.** Fr. In French marine law. A space on the side of a harbour for the lading and unlading of merchandize. *Ord. Mar.* liv. 1, tit. 1, art. 4.

**QUE.** L. Fr. That. *Volons que si*; we will that if. *Britt.* c. 67. *Issi que*; so that. *Id. ibid.*

Who. *Cely que homage doit faire*; he who ought to do homage. *Id.* c. 60. *Ceux que ont pris*; those who have taken. *Id.* c. 20.

Which. *Les services que à vous appendent*; the services which belong to you. *Id.* c. 68.

Whose. See *Que estate*.

Than. *Par baillyfs autres que par les nos*; by other bailiffs than ours. *Id.* c. 27.

**QUE DONERA?** L. Fr. To whom will he give? To whom is the gift to be made? An expression substituted by Lord Coke, in place of *Que dirra?* in the statute *Modus Levandi Fines*. The language of the statute is,—*le justice dirra*, "*Que dirra, Sir Robert?*" *et nosmera un des parties*; the justice shall say, "*What saith Sir R.?*" and shall name one of the parties. Lord Coke reads "*Que donera?*" and translates "who is the conusec, that he may give it?" and the serjeant names him. 2 *Inst.* 510.

**QUE EST LE MESME.** L. Fr. Which is the same. A phrase anciently used in a defendant's plea, in an action of trespass, denoting a positive justification of the very act complained of by the plaintiff. *Cowell*. The same with the more modern Latin phrase, *Quæ est eadem*, (q. v.)

**QUE ESTATE.** L. Fr. [L. Lat. *cujus statum*, or *quem statum*.] Whose estate. A term formerly used in pleading, in deriving a title from another, particularly in claiming a prescription; the party averring that he and those whose estate he has, (*que estate il ad*), have been used to enjoy the right claimed, &c. See *Prescribe*. It

is a term of general description, used to avoid the necessity of showing in what manner particularly, the estate passed. *Termes de la Ley. Steph. Pl.* 324. See *Id.* 305.

**QUEEN ANNE'S BOUNTY.** A fund created by a charter of Queen Anne, (confirmed by statute 2 Ann. c. 11,) for the augmentation of poor livings, consisting of all the revenue of first fruits and tenths, which was vested in trustees forever. 1 *Bl. Com.* 286.

**QUEEN CONSORT.** In English law. The wife of a reigning king. 1 *Bl. Com.* 218.

**QUEEN DOWAGER.** In English law. The widow of a king. 1 *Bl. Com.* 223.

**QUEEN GOLD.** [L. Lat. *aurum reginæ*.] In English law. A revenue reserved to the queens of England, from a very early period, out of the demesne lands of the crown, which was expressly appropriated to their use, distinct from the king. 1 *Bl. Com.* 220, 222. It has not been exacted since the death of Henry VIII. except on one occasion, in the reign of Charles I. *Id.* 221.

**QUEEN REGNANT.** In English law. A queen who holds the crown in her own right; as the first Queen Mary, Queen Elizabeth, Queen Anne, and the present Queen Victoria. 1 *Bl. Com.* 218. 2 *Steph. Com.* 465.

**QUEEN'S BENCH.** The English court of King's Bench is so called during the reign of a queen, as at present. 3 *Steph. Com.* 403.

**QUEEN'S (or KING'S) COUNSEL.** In English law. Barristers called within the bar, and selected to be the queen's (or king's) counsel, learned in the law; answering, in some measure, to the advocates of the revenue, (*advocati fisci*), among the Romans. They cannot be employed in any cause against the crown, without special license. 3 *Bl. Com.* 27. 3 *Steph. Com.* 386.

**QUEEN'S (or KING'S) EVIDENCE.** In English law. An accomplice in a felony, who is admitted as evidence for the crown against his accomplices;\* one to whom a hope is held out that if he will fairly disclose the whole truth, as a witness at the trial, and bring the other offenders to justice, he shall himself escape punishment. 4 *Steph. Com.* 398, 399.

**QUEEN'S PRISON.** In English law.

A prison appropriated to the debtors and criminals confined under process, or by authority of the superior courts at Westminster, the Marshalsea Court and Palace Court, and the High Court of Admiralty, and also to persons imprisoned under the bankrupt law. It was established by statute 5 & 6 Vict. c. 22, consolidating into one, the Queen's Bench, the Fleet, and the Marshalsea Prisons. 3 *Steph. Com.* 254.

QUENS, *Quenz*. L. Fr. In old English law. Earl. *LL. Gul. Cong.* l. 2.

QUER'. An abbreviation of *querens*, (plaintiff.) 1 *Inst. Cler.* 12.

QUERELA. Lat. [from *queri*, to complain.] In the civil law. A complaint. A name given to the three actions of *querela testamenti inofficiosi*, *querela inofficiosæ donationis*, and *querela inofficiosæ dotis*. *Calv. Lex. Oldendorpius. Prateus*. Called by the milder name of *complaint*, because the relatives between whom it lay, were not supposed to accuse and litigate in the ordinary way. *Voss. Inst. Orat.* lib. 1, c. 6, § 2. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 18, § 580.

QUERELA INOFFICIOSI TESTAMENTI. Lat. In the civil law. A complaint of an inofficious or undutiful will. A species of action allowed to a child that had been unjustly disinherited or passed over in its parent's will, to rescind the will, which was *complained of*, not as being illegally made, but as not being consistent with parental duty, (*non ex officio pietatis*.) *Inst.* 2, 18, pr. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 18. 2 *Kent's Com.* 327. It was grounded on the delicate fiction that the testator was not of sound mind when he made the will, (*hoc colore, quasi non sane mentis fuerint, cum testamentum ordinarent.*) *Inst. ub. sup.*

QUERELA. L. Lat. [L. Fr. *querelle*; from *queri*, to complain.] In old English law. A complaint or plaint in an action; a plaintiff's count or declaration. *Proponat querens querelam suam et intentionem*; the plaintiff shall propound or exhibit his complaint and count. *Bract.* fol. 57.

An action preferred in any court of justice. *Cowell*. A cause of action; a controversy, or debate. 8 *Co.* 153, *Altham's case*. Hence the old English *querel*, *quarrel*, and *quarrel*, (q. v.) in the sense of *action*, or cause of action. *Id. ibid.* 2 *Inst.* 213.

QUERELE, *Querrel*. L. Fr. In old

English law. A complaint; an action. *A oyer et terminer toutes querelles del people*; to hear and determine all the complaints of the people. *Britt.* fol. 1. *Yearb.* P. 18 Hen. VI. 5.

QUERENS. Lat. [from *queri*, to complain.] In old English practice. A plaintiff; the plaintiff or complaining party. *Bract.* fol. 98 b, 214, 240, *et passim.* 8 *Co.* 153 b. The complaining party in a personal action; as *petens*, (demandant,) was, in a real action. *Actor, sive sit petens sive querens.* *Bract.* fol. 106 b. But *querens* was used in assises. *Fleta*, lib. 4, c. 7.

QUERKE. L. Fr. [from Lat. *quercus*.] In old English law. An oak. *Querkes*; oaks. *Yearb.* M. 11 Hen. VI. 3. *Dyer*, 35 b, (Fr. ed.)

QUESTA. L. Lat. In old records. A quest; an inquest, inquisition or inquiry, upon the oaths of an empanelled jury. *Cowell*.

QUESTION. [Lat. *questio*.] A name given to the rack used to extort confession from criminals. 4 *Bl. Com.* 325. See *Quæstio*.

QUESTUS, *Quæstus*. Lat. [from *quære*, to seek, to get or acquire.] In old English law. Land which was gained not by hereditary succession, but by one's own labor and industry, (*quæ suo sibi quisque comparat labore et industriâ*;) purchase land, (*terra perquisita*.) *Spelman. Aut habet hæreditatem tantum, aut questum tantum, aut hæreditatem et questum*; either has inheritance only, or purchase only, or both inheritance and purchase. *Glanv.* lib. 7, c. 1. *Spelman* quotes from the Book of Ramsey, (written in the reign of King Stephen,) a passage which carries this sense of the word as far back as the Saxon King Ethelred.

\* \* From *questus*, (or *quære*, its root,) was framed, at an early period in European law, the compounds *conquestus*, *conquestum*, denoting, properly, that which was *gotten together*, as by the labor of several, (quasi ἀπὸ τοῦ τοῖς συνήγοις.) *Spelman*. Hence the French *conquest*, which *Lindenbrog*, (commenting on the *Capitular. Carol.* lib. 4, c. 74,) defines "acquisitions of goods made during marriage," (*acquisitions de biens faites durant le mariage*;) which is precisely the signification of the word in Scotch law. See *Conquest*.

That *conquest* was originally used in English law in the sense of *acquisition* or *purchase*, and was improperly and abu-

sively (*ceu per adulterium*) employed to express the ideas of *victory* and *martial subjugation*, (now inseparable from it) is clearly shown by Spelman, who traces it to the peculiar circumstances under which the great Norman *Conquest* of England was accomplished. William the First was called "the *Conqueror*," (Lat. *conquestor*,) because he succeeded to the throne of England not by hereditary right, but on the bequest of Edward the Confessor; that is, (according to the old French idiom,) by *quest* and *conquest*, commonly called *purchase*. But as the enforcement of his right, thus acquired, was accomplished by means of the signal *victory* obtained over Harold and the Saxons, the ideas of *victory* and *subjugation* became so strongly attached to his peculiar title of *Conquestor*, as gradually to obscure, and finally to supplant its original and proper meaning.

QUESTUS EST NOBIS. L. Lat. Hath complained to us. Initial words of various old writs in the Register. *Reg. Orig.* 92, 93.

QUI, *Qi, Qy*. L. Fr. Who; whom. *De ceux qui par engyn out*; of those who by fraud have. *Britt. c. 4. Cely de qui sont tenus*; him of whom they are holden. *Id. c. 78. Ne poit saver par qui ne par quex*; cannot know by whom (sing.) nor by whom (plur.) *Id. c. 6.*

Qui doit inheriter al pere doit inheriter al fitz. He who should have been heir to the father shall be heir to the son. 2 *Bl. Com.* 223. *Broom's Max.* [389.]

QUI. Lat. Who; he who. The initial word of numerous maxims. See *infra*.

Qui adimit medium, dirimit finem. He who takes away the mean, destroys the end. *Co. Litt.* 161 a. He that deprives a man of the mean by which he ought to come to a thing, deprives him of the thing itself. *Id. ibid. Litt. sect. 237.* See *Qui destruit*, &c.

Qui aliquid statuerit, parte inaudita altera, æquum lret dixerit, hand æquum fecerit. He who determines any matter without hearing both sides, though he may have decided right, has not done justice. 6 *Co.* 52 a, *Boswell's case*. A quotation from Seneca. *Traged. fo. 55, Medea*, 195. 4 *Bl. Com.* 283.

Qui alterius jure utitur, eodem jure uti debet. He who uses the right of another, ought to use the same right, [that is, ought to use it subject to the rights and lia-

bilities pertaining to it.] *Broom's Max.* [356.]

Qui bene interrogat, bene docet. He who questions well, teaches well. 3 *Bulstr.* 227. Information or express averment may be effectually conveyed in the way of interrogation. *Id. ibid.*

Qui bene distinguit, bene docet. He who distinguishes well, teaches well. 2 *Inst.* 470. In both these maxims, *docet* is translated in Branch's *Principia*, "learns."

Qui concedit aliquid, concedit omne id sine quo concessio est irrita. He who grants any thing, grants every thing without which the grant is fruitless. *Jenk. Cent.* 32, case 63.

Qui contemnit præceptum, contemnit præcipientem. He who contemns [contemptuously treats] a command, contemns the party who gives it. 12 *Co.* 97, *Countess of Shrewsbury's case*.

Qui cum alio contrahit, vel est, vel esse debet non ignarus conditionis ejus. He who contracts with another either is, or ought to be, not ignorant of his condition. *Dig.* 50. 17. 19. *Story's Conf. Laws*, § 76.

Qui destruit medium, destruit finem. He who destroys the mean, destroys the end. 10 *Co.* 51 b, *Lampet's case*. *Co. Litt.* 161 a. *Shep. Touch.* 342.

Qui ex damnato eoitu nascuntur inter liberos non computantur. They who are born of a condemned [or illicit] connection, are not counted among children. *Bract.* fol. 5. *Co. Litt.* 8 a. 2 *Bl. Com.* 247. Bastards are held to be *nullius filii*, the children of nobody. *Id. ibid. Broom's Max.* 221, [390.]

Qui facit per alium, facit per se. He who acts through another, acts of himself. 1 *Bl. Com.* 429, 474. Otherwise expressed, *Qui per alium facit, per seipsum facere videtur*. He who acts by another is considered as acting of himself. *Co. Litt.* 258 a. He who does an act through the medium of another party, is in law considered as doing it himself. *Broom's Max.* 373, [643.] An agent is merely the medium through which the principal himself acts. The fundamental principle of the law of agency, and a maxim of almost universal application. *Story on Agency*, §§ 440, 442. 7 *Man. & Gr.* 32, 33. See 1 *Selden's R.* 48, 53.

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. He who has jurisdiction to loosen, has jurisdiction to bind. 12 *Co.* 60. Applied to writs of prohibition and consultation, as resting on a similar foundation. *Id. ibid.*

**Qui hæret in litera, hæret in cortice.** He who sticks, [stops] in the letter, stops in the rind, [or outer covering.] *Co. Litt.* 54 b. 5 *Co.* 4 b, *Lord Mountjoy's case.* 11 *Co.* 34 b, *Powlter's case.* 2 *Eden*, 55. *Grose*, J. 12 *East*, 372. He who stops in the mere letter of an instrument, (goes no farther than the mere words of it,) stops in its outer covering, and does not reach its essential meaning. Words are the mere cortex, rind, or bark of an instrument or statute, and are not to be paused upon or dwelt upon, to the neglect of the heart, pith or inner substance.\* He who considers merely the letter of an instrument, goes but skin-deep into its meaning. *Broom's Max.* [534.] Where the *intention* is clear, too minute a stress should not be laid on the strict and precise signification of words. 2 *Bl. Com.* 379. *Broom's Max. ub. sup.* See *Cortex, Bark.*

This is one of the most familiar maxims of the law, but its literal meaning is scarcely expressed by the common translation, "He who sticks to the letter, sticks to the bark," which besides being rude, is grammatically inaccurate, and does not express the full force of *hæret*, which does not imply adhesion to a thing, but rest or pause upon or in it; hesitancy; a going no farther. The English word "stick" had precisely this meaning, and is often used in the old books to denote *hesitancy* on the part of a judge. See *Hære*.

Lord Bacon, citing this maxim, pushes the figure still farther. "This is not worthy the name of *cortex*; it is but *muscus corticis*, the moss of the bark." Argument in Case of the Postnati of Scotland; *Works*, iv. 333.

**Qui in jus dominiumve alterius succedit, jure ejus uti debet.** He who succeeds to the right or property of another, ought to use his right [ought to exercise it as the assignor himself would have exercised it.] *Dig.* 50. 17. 177, pr. The assignee of property takes it subject to all the liabilities, and clothed with all the rights which attached to it in the hands of the assignor. *Broom's Max.* [356.]

**Qui jure suo utitur, nemini facit injuriam.** He who uses his own right, harms no one. *Branch's Pr.* Another form of the civil law maxim *Non videtur vim facere*, &c. (q. v.)

**Qui jussu judicis aliquod fecerit, non videtur dolo malo fecisse, quia parere necesse est.** He who does any thing by command of a

judge, [or one lawfully exercising judicial authority,] is not supposed to have acted from a wrong or improper motive, because it was his bounden duty to obey. 10 *Co.* 76 a, b. *Broom's Max.* 48, [69.]

**Qui non habet, ille non dat.** He who has not, gives not. He who has nothing to give, gives nothing. A person cannot convey a right that is not in him. If a man grant that which is not his, the grant is void. *Shep. Touch.* (by Preston,) 243. *Watkins on Conv.* (by Preston,) 191. See *Nemo dare potest*, &c.

**Qui non habet in crumena, luat in corpore.** He who has not [the means of satisfaction] in his purse, must pay in his body. If a man cannot pay his fine, he must go to prison. 4 *Bl. Com.* 380. Otherwise expressed, *Qui non habet in ære, luat in corpore.* 2 *Inst.* 173. *Si in ære non habeat, in pelle luat.* 1 *Kent's Com.* 423.

**Qui non obstat quod obstare potest, facere videtur.** He who does not prevent [a thing] which he can prevent, is considered to do [as doing] it. 2 *Inst.* 146.

**Qui non improbat, approbat.** He who does not condemn, approves. 3 *Inst.* 27.

**Qui non prohibet quod prohibere potest, assentire videtur.** He who does not forbid [an act] which he can forbid, is supposed to assent [to it.] 2 *Inst.* 305. Otherwise expressed, *Qui non prohibet eum prohibere possit, jubet.* He who does not forbid [a thing being done] when he can forbid it, commands [it.] 1 *Bl. Com.* 430. Negligence is a kind of implied consent. *Id. ibid.* See *Grotius de Jur. Bell.* lib. 2, c. 21, § 2, n. 2.

**Qui obstruit aditum, destruit commodum.** He who obstructs a way, passage or entrance, destroys a benefit or convenience. *Co. Litt.* 161 a. He who prevents another from entering upon land, destroys the benefit which he has from it. *Id. ibid.*

**Qui "omne" dicit, nihil excludit [exceptit.]** He who says "all" excludes or excepts nothing. 11 *Co.* 59 b, *Foster's case.* *Shep. Touch.* (by Preston,) 90.

**Qui peccat ebrius, luat sobrius.** He who sins when drunk, shall be punished when sober. *Cary's R.* 133. *Broom's Max.* [14.]

**Qui potest et debet vetare, jubet.** He who can and ought to forbid a thing [if he do not forbid it,] directs it. 2 *Kent's Com.* 483, note.

**Qui primum peccat, ille facit rixam.** He who first sins makes the strife. He who

does the first wrongful act is chargeable as the cause of the quarrel. *Branch's Max.*

**Qui prior est tempore, potior est jure.** He who is before in time is the better in right. Priority in time gives preference in law. *Co. Litt.* 14 a. 4 *Co.* 90 a, *Drury's case.* 3 *East*, 93. A maxim of very extensive application, both at law and in equity. *Broom's Max.* 329—335, [260.] 1 *Story's Eq. Jur.* § 64 d. *Story on Bailm.* § 312. 24 *Mississippi R.* 208.

**Qui rationem in omnibus quærunt, rationem subvertunt.** They who seek a reason in [for] every thing, subvert reason. 2 *Co.* 75 a, *Lord Cromwell's case.* A sentence quoted from Theophrastus, in *Met.* There are some things for which no reason can be given, and for which no reason should be sought or required. *Broom's Max.* 66, [117.]

**Qui semel actionem renunciaverit, amplius repetere non potest.** He who has once relinquished his action, cannot bring it again. 8 *Co.* 59 a, *Beecher's case.* A rule descriptive of the effect of a *retraxit* and *nolle prosequi.*

**Qui semel est malus, semper præsumitur esse malus in eodem genere.** He who is once criminal, is presumed to be always criminal in the same kind, or way. *Cro. Car.* 317. *Best on Evid.* 345. He who has once committed an offence, is supposed always to have an inclination to repeat it.

**Qui sentit commodum, sentire debet et onus.** He who experiences the benefit, ought also to feel [or bear] the burden. He who enjoys the benefit or advantage of a thing, ought also to be subject to the burden or disadvantage connected with it. 2 *Inst.* 489. A maxim expressed in a hexameter line, and one of the most extensive application in the law. He who enjoys the benefit arising from a title to land, must bear the burden of the incumbrances attached to it, and of the covenants that run with the land. *Broom's Max.* 313, [552.] *Bacon's Use of the Law*, 31. *Shep. Touch.* 178. All who are to receive benefit from the construction of a thing, must be contributory to its construction. 5 *Co.* 100 a, *Rooke's case.* So, in partnership, the agreement to share in the profits of the concern carries with it a corresponding liability for the debts or losses. *Broom's Max.* 315, [554.] So, a principal will not be allowed to avail himself of the benefits of a transaction by his agent, without at the same time subjecting himself to its burthens.

*Story on Agency*, § 389. And, in equity, the rule has an extensive application. 1 *Story's Eq. Jur.* § 469.

**Qui sentit onus, sentire debet et commodum.** He who bears the burden of a thing, ought also to experience the advantage arising from it. 1 *Co.* 99 a, *Shelley's case.* As a principal is bound by the acts of his authorized agent, so he may take advantage of them. *Broom's Max.* 317, [559.] This is the converse of the preceding maxim.

**QUI statuit aliquid, parte inaudita altera, Æquum licet statuerit, haud æquus fuit.**

He who determines any thing, without hearing both parties, though he may have determined justly, has not himself been just. A quotation from Seneca, which has been adopted as a maxim of the common law. 4 *Bl. Com.* 283. See **Qui aliquid statuerit, &c.**

**Qui tacet, consentire videtur.** He who is silent, is supposed to consent; the silence of a party implies his consent. *Jenk. Cent.* 32, case 64. *Id.* 68, case 30. *Id.* 226, case 87. The principle of the doctrine of implied waiver, of the validity of proceedings by default, &c. and of the doctrine of equitable estoppel in equity. Thus, if a person having the legal title to property, stands by and acquiesces in the sale of it by another person claiming or having color of title, he will be estopped afterwards in asserting his title against the purchaser. 2 *Kent's Com.* 483, note. So, where the owner of land stands by and suffers another who supposes he has an absolute title to the estate, to expend money in improvements and erections on the land, without giving any notice of his own claim, he will not be permitted to avail himself of such improvements, without paying a full compensation therefor. 1 *Story's Eq. Jur.* §§ 388, 389. See 1 *Story's R.* 493. As to the application of the rule in the law of evidence, see 1 *Greenl. Evid.* § 199.

This maxim is immediately derived from the canon law, and is otherwise expressed with still more brevity, **Qui tacet consentit**; he who is silent, consents. *Bonifacius de Reg. Juris in Sexto*, reg. 43. 1 *Mackeld. Civ. Law*, 162, Kaufmann's note. The civilians have generally supposed it to be of too sweeping a nature, and have accordingly qualified it by the maxim laid down in the Digests, **Qui tacet non utique fatetur, sed tamen verum est eum non negare.** He who is silent does not thereby confess, but yet it is true that he does not deny. *Dij.*

50. 17. 142. But, according to Dr. Kaufmann, these two rules apply to matters that are wholly distinct; *consensus* belonging to the doctrine of contracts alone, while *confessio* relates merely to proceedings.

**QUI TAM.** L. Lat. (Who as well.) The name given to an action brought by an informer, where part of the penalty or forfeiture sued for, is given to the king, the state, the poor, or to some public use, and the other part to the informer or prosecutor. So termed from the emphatic words of the clause in which the plaintiff was described in the old forms: *QUI TAM pro domino rege, &c. quam pro seipso in hac parte sequitur*; who sues as well for the king, &c. as for himself, in this behalf. 3 *Bl. Com.* 160.

**Qui tardius solvit, minus solvit.** He who pays more tardily [than he ought,] pays less [than he ought.] *Jenk. Cent.* 58. A maxim of the civil law, in which *minus* had the technical sense of *negation*, which is entirely lost sight of in the common English translations. See *Minus*. *Minus solvit* admits of (if it does not here require) the translation, "pays not at all;" the maxim importing that a failure to pay at the time stipulated amounts to a breach of the promise to pay, though payment be actually made afterwards.

**Qui timent, cavent et vitant.** They who fear, take care and avoid. *Branch's Pr.*

**Qui vult decipi, decipiatur.** Let him who chooses to be deceived, be deceived. Where a man procures a fraud to be committed on himself, he must bear the consequences of it, and cannot take advantage of his own wrong to the prejudice of another. *Shep. Touch.* (by Preston,) 56.

**QUIA.** Lat. Because. A word particularly appropriated to express the *cause* (*causa*) or consideration of a grant, in old conveyances. *Co. Litt.* 204 a.

Scito quod ut modus est, si conditio, quia causa.  
*Bract. fol. 18 b.*

**QUIA DATUM EST NOBIS INTEL-LIGI.** L. Lat. Because it is given to us to understand. Formal words in old writs. *Rot. Parl.* 4 Hen. IV.

**QUIA DOMINUS REMISIT CURI-AM.** L. Lat. In old practice. Because the lord hath remised or remitted his court. A clause inserted at the conclusion of a writ of right, where it was brought, in the first instance, in the king's court; the lord in whose court-baron it regularly ought to be first brought, having waived or remitted

his right. 3 *Bl. Com.* 195. *Id.* Appendix, No. i. sect. 4.

**QUIA EMPTORES.** Lat. (Because the purchasers.) The title of the statute of Westminster 3, 18 Edw. I. c. 1, which provided that from thenceforth it should be lawful for every freeman or freeholder to sell his lands or tenements or part thereof at his pleasure, so that, however, the feoffee should hold such lands or tenements of the chief lord of the same fee, by the same services and customs by which his feoffor before held them. Cap. 1. So called from its initial words: *QUIA EMPTORES terrarum et tenementorum de feodis magnatum, &c.* 2 *Bl. Com.* 91. See *Barringt. Obs. Stat.* 167. See the New-York case of *De Peyster v. Michael*, 2 *Selden's R.* 467.

**QUIA ERRONICE EMANAVIT.** L. Lat. Because it issued erroneously, or through mistake. A term in old English practice. *Yelv.* 83.

**QUIA IMPROVIDE EMANAVIT.** L. Lat. Because it issued improvidently, or unadvisedly. *Ambl.* 61. 3 *East*, 128.

**QUIA TIMET.** Lat. (Because he fears or apprehends.) In equity practice. The technical name of a bill filed by a party who seeks the aid of a court of equity, because he fears some future probable injury to his rights or interests. 2 *Story's Eq. Jur.* § 826. Bills *quia timet* are so called in analogy to certain writs of the common law, whose objects were of a similar nature; and they are, in themselves, in the nature of writs of prevention to accomplish the ends of precautionary justice. *Id.* §§ 825, 826.

**QUICK.** Living; alive. "Quick chattel must be put in pound-overt, that the owner may give them sustenance; dead need not." *Finch's Law*, b. 2, ch. 6. See *Quyke*.

**Quicquid acquiritur servo, acquiritur domino.** Whatever is acquired by the servant is acquired for the master. *Pulling on Merc. Accounts*, 38, note. Whatever rights are acquired by an agent, are acquired for his principal. *Story on Agency*, § 403.

**Quicquid est contra normam recti, est injuria.** Whatever is against the rule of right, is a wrong. 3 *Bulstr.* 313.

**Quicquid in excessu actum est, lege prohibetur.** Whatever is done in excess is prohibited by law. 2 *Inst.* 107.

**Quicquid judicis auctoritati subjicitur,**

**novitati non subjicitur.** Whatever is subjected to the authority of a judge is not subjected to novelty. Whatever is left to the discretion of a judge, as in cases without precedent, is not for that reason left to the caprice of novelty or innovation. *4 Inst.* 66.

**Quicquid plantatur solo, solo cedit.** Whatever is planted in the soil, belongs to the soil, [or becomes a part of it.] A maxim derived from the civil law, and embodying the general common law rule, that whatever is planted in the soil passes with it. See this rule and its exceptions considered, in *Broom's Maxims*, 177—189, [298—310.]

By an extension of the meaning of the word *plantatur*, this maxim has also been applied in the law of fixtures. *Wentworth Offic. Exec.* 145. *Broom's Max.* 189, [310.] *et seq.* 2 *Smith's Lead. Cas.* 114. 2 *Steph. Com.* 261. But in the civil law, *plantatio* is confined to its proper signification; *ædificatio* or *inædificatio* being the words used to express artificial additions or accessions to the soil. *Inst.* 2. 1. 29, 30, 31.

**Quicquid solvitur, solvitur secundum modum solventis,—quicquid recipitur, recipitur secundum modum recipientis.** Whatever is paid, is paid according to the manner of [directed or intended by] the payer,—whatever is received, is received according to that of the receiver. *Halk. Max.* 149. *Broom's Max.* [638.]

**QUID.** Lat. What. A word used in old writers, as preliminary to definition. Thus Sheppard, in his *Touchstone*, arranges his subjects under the two general heads of *Quid*, (what,) and *Quotuplex*, (of how many kinds.) *Shep. Touch.* 37, 50.

**QUID JURIS CLAMAT.** L. Lat. (What right he claims.) In old English practice. A writ which lay for the grantee of a reversion or remainder, where the particular tenant would not attorn, for the purpose of compelling him. *Termes de la Ley.* *Cowell.*

**QUID PRO QUO.** Lat. What for what; something for something. An equivalent, or consideration; that which is given in exchange for another thing; that which is done in consideration of another thing. Answering to the Gr. *συνάλλαγμα*, a reciprocal performance of both parties to a contract. *Cowell.* 2 *P. Wms.* 219.

**QUIET ENJOYMENT,** *Covenant for.* In conveyancing. An ordinary covenant in deeds, whereby the grantor agrees that

the grantee shall hold the land, undisturbed by himself or others. 2 *Hilliard's Real Prop.* 374. 4 *Kent's Com.* 471.

**QUIETA CLAMANTIA.** L. Lat. In old English law. Quit-claim. *Charta de qujeta clamantia*; a charter or deed of quit-claim. *Bract.* fol. 33 b. *Fleta*, lib. 3, c. 14, § 1. Called also *quietè clamantia*, (q. v.) And in some old records, *qujeta clamatio.* *Par. Ant.* 220. *Fleta*, lib. 5, c. 39, § 6.

**QUIETANCIA, Quietantia.** L. Lat. In old English law. A quittance, acquittance, or testimonial of receipt. *Cowell.*

**QUIETARE.** L. Lat. To quit, acquit, discharge or save harmless. A formal word in old deeds of donation and other conveyances. *Cowell.*

**QUIETE.** Lat. Quietly; in quiet; peaceably. A formal word in ancient deeds. *Habendam et tenendam,—liberè et quietè, honorificè, benè et in pace*; to have and to hold—freely and quietly, honorably, well and in peace. *Bract.* fol. 35. Bracton, in his exposition of the form from which these words are extracted, observes that by the word *quietè*, (quietly,) the donor means that the donee shall have quiet and peace, so that he may enjoy the thing given peaceably, and not be disquieted. See *Fleta*, lib. 3, c. 14, § 5. It seems to be the germ of the modern covenant for *quiet enjoyment*.

**QUIETE CLAMANTIA.** L. Lat. In old English law. Quit-claim. *Bract.* fol. 33 b.

**QUIETE CLAMARE.** L. Lat. In old conveyancing. To quit-claim; to renounce all pretension of right and title. *Cowell.* *Quietum clamare* is used by *Fleta*, *Littleton* and *Coke*.

**QUIETUM CLAMARE.** L. Lat. In old conveyancing. To quit-claim. *Novèrint universi per presentes me, A. de B. remisisse, relaxasse, et omnino de me et heredibus meis quietum clamasse C. de D. totum jus, &c.*; Know all men by the presents, that I, A. of B. have remised, released, and altogether from me and my heirs, have quit-claimed to C. of D. all the right, &c. *Litt. sect.* 445. See *Fleta*, lib. 5, c. 37, § 5.

**QUIETUS, Quittus.** L. Lat. In old English law. Quit; clear; free; acquitted; discharged. *Nisi capitalis debitor monstraverit se inde esse quietum versus eosdem plegios*; unless the principal debtor show that he is discharged thereof against the same pledges. *Mag. Cart.* 9 *Hen.* III.

c. 8. *Quod quieti sint imperpetuum de omnibus purpresturis, &c.*; that they be forever quit of all purprestures, &c. *Cart. de For.* 9 Hen. III. c. 4. *Recedet inde reus quietus imperpetuum*; the defendant shall go quit thereof forever. *Fleta*, lib. 2, c. 63, § 12.

**QUIETUS.** L. Lat. In exchequer practice. A word used by the clerk of the pipe, and auditors in the exchequer, in their acquittances or discharges given to accountants; usually concluding with an *abinde recessit quietus*, (hath gone quit thereof;) which was called a *quietus est. Cowell*.

An acquittance or discharge. "C. W. passed his accounts to Lady day, 1724, and had his *quietus* for each year, to that time." *Bunb.* 316, case 400. See *Hardr.* 189.

This word is used in American law, and applied to the discharge of an executor or administrator. See 4 *Mason's R.* 133. 3 *Florida R.* 233.

**QUIETUS.** L. Lat. In old practice. The dismissal or removal of a judge from the bench. "After this time, Sir Francis Pemberton received his *quietus*, and afterwards practiced again in all the courts in Westminster Hall, but without the bar, as a serjeant." 2 *Show.* 94. "This vacation, Sir Robert Sawyer had his *quietus*." 3 *Mod.* 143. See *Id.* 239.

**QUIETUS REDDITUS.** L. Lat. In old English law. Quit rent. *Spelman*. See *Quit rent*.

**Quilibet potest renunciare juri pro se introducto.** Every one may renounce or relinquish a right introduced for his own benefit. 2 *Inst.* 183. *Wingate's Max.* 483, max. 123. 4 *Bl. Com.* 317. Every man can renounce a benefit which the law would have introduced for his own convenience. *Broom's Max.* 310. Any one may, at his pleasure, renounce the benefit of a stipulation, or other right, introduced entirely in his own favor. *Id.* [546.] A general maxim, applied to the relinquishment of claims, defences and other rights upon which a party may insist if he chooses. *Id.* 309—313, [547—552.] *Best on Evid.* Introd. 103. Every man may waive rights the benefit whereof exclusively belongs to himself. *Story on Agency*, § 463. So a person may renounce a constitutional provision made for his own benefit. 6 *Hill's (N. Y.) R.* 47. *Cowen, J. Id.* 48. See 4 *Ohio St. R.* 376.

This maxim is obviously derived from those of the civil law. *Unicuique licet contemnere hæc quæ pro se introducta sunt. Dig.* 4. 4. 41. *Omnes licentiam habent his quæ pro se introducta sunt, renunciare. Cod.* 2. 3. 29. Bracton repeats it in nearly the modern form: *Potest quis renunciare pro se et suis juri quod pro se introductum est. Bract.* fol. 20.

**QUILLE.** Fr. In French marine law. Keel; the keel of a vessel. *Ord. Mar.* liv. 3, tit. 6, art. 8.

**QUINDENA.** L. Lat. In old English law. The *quinzim*, *quinsieme*, or fifteenth day after a feast. *Stat. Westm.* 2, pr. See *Fleta*, lib. 2, c. 35.

A fortnight; double the period of a *septimana*, (seven-night or week.) *Fleta*, lib. 1, c. 24, § 5. "That which we call this day fortnight, excluding the day, the French and the law phrase calls this day fifteen days, or *quindena*, including the day." *Bacon's Arg.* Jurisdiction of Marches, *Works*, iv. 265.

**QUINQUE PORTUS.** Lat. In old English law. The Cinque Ports. *Spelman. Fleta*, lib. 2, c. 54, § 8.

**QUINSIEME, Quinzime.** L. Fr. and Eng. In old English law. A fifteenth; a tax so called. *Cowell. See Fifteenth.*

**QUINTO EXACTUS.** Lat. In old practice. Called or exacted the fifth time. A return made by the sheriff, after a defendant had been proclaimed, required or exacted, in five county courts successively, and failed to appear; upon which he was outlawed by the coroners of the county. 3 *Bl. Com.* 283.

**QUIRE OF DOVER.** In English law. A record in the Exchequer, showing the tenures for guarding and repairing Dover Castle, and determining the services of the Cinque Ports. 3 *How. St. Trials*, 868.

**QUIT.** [L. Lat. *quietus*, q. v.] Free; clear; discharged; released; acquitted or absolved.

**QUIT-CLAIM.** [L. Lat. *quieta clamantia*, *quieta clamatio*; L. Fr. *quiet-clame*; *quiteclamaunce*.] In conveyancing. The release or relinquishment of a claim. A deed by which some right, title, interest or claim which one person has, or is supposed to have, in or to an estate held by another, is released or relinquished.

A conveyance corresponding with a release, at common law, in which the grantor covenants only against those who claim under himself, and not against adverse and

paramount titles. Of this class are all deeds given by public officers, such as administrators, sheriffs, &c. who covenant only for the regularity of their own proceedings. 2 *Hilliard's Real Prop.* 302.

TO QUIT-CLAIM. [L. Lat. *quietè clamare, quietum clamare.*] In conveyancing. To release or relinquish a claim; to execute a deed of quit-claim. See *Quit-claim*.

QUIT RENT. [L. Lat. *quietus redditus.*] A yearly rent, by the payment of which the tenant goes *quit* and free of all other services. 2 *Bl. Com.* 42. *Spelman*, voc. *Quietus redditus*. 1 *Chitt. Gen. Pr.* 228.

In some of the United States, a fee farm rent is so termed. 1 *Hilliard's Real Prop.* 239, [231.] See *Id.* note (a.)

QUITE CLAMAUNCE. L. Fr. Quit-claim. *Britt.* c. 85.

QUITTUS. L. Lat. In old Scotch law. Quit; free. *Quittos et immunes*; quit and clear. 1 *Pitc. Cr. Trials*, part 2, p. 72.

QUO ANIMO. Lat. With what intention or motive. "It was for them to consider *quo animo* the windows and shutters were broken." Lord Kenyon, 1 *East*, 615. Used frequently as a substantive, in lieu of the single word *animus*, design or motive. "The *quo animo* is, in each case, the real subject of inquiry." 1 *Kent's Com.* 77. 2 *Id.* 382. See *Animo, Animus*.

QUO JURE. L. Lat. (By what right.) In old English practice. A writ which lay for one that had land in which another claimed common, to compel the latter to show *by what title* he claimed it. *Cowell. F. N. B.* 128 *F. Reg. Orig.* 156 b. *Britt.* c. 59.

QUO MINUS. L. Lat. (By which—less.) In English practice. A process peculiar to the Court of Exchequer; being the writ by which all actions in that court were, until recently, required to be commenced. So termed from the emphatic words of the old Latin form, in which the plaintiff suggested that he was the king's farmer or debtor, and alleged that the defendant had done him the injury complained of, *by which* he was *less* able (*quo minus sufficiens existit*) to pay the king his debt or rent. 3 *Bl. Com.* 45, 286. *Id.* Appendix, No. iii. sect 4. This was abolished by the statute 2 Will. IV. c. 39.

QUO WARRANTO. L. Lat.

(By what warrant.) In old English practice. A writ, in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise or liberty, to inquire *by what authority* he supported his claim, in order to determine the right. 3 *Bl. Com.* 262. It lay also in case of non-user, or long neglect of a franchise, or misuser, or abuse of it; being a writ commanding the defendant to show *by what warrant* he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. 3 *Bl. Com.* 262. It has long been superseded in practice by the proceeding by information in the nature of a *quo warranto*, which is the usual proceeding also in American practice. *Id.* 263. 1 *Id.* 485. 3 *Steph. Com.* 689—693. *Cole on Informations*, 110—168. 2 *Kent's Com.* 313, and note. *United States Digest*, *Quo warranto*.

QUOAD. Lat. As to; as far as concerns. Lord Ellenborough, 12 *East*, 409. 2 *Mod.* 66.

QUOAD HOC. Lat. As to this; so far as this is concerned. *Bract.* fol. 31.

QUOAD SACRA. Lat. As to sacred things; for religious purposes. Lord Campbell, 6 *Bell's Appeal Cases*, 336.

Quod ab initio non valet, [in] tractu temporis non convalescet. That which is not valid at the beginning, shall not gain force by lapse of time. *Co. Litt.* 35 a. *Noy's Max.* 16. 2 *Co.* 55 b, *Buckler's case*. 4 *Co.* 2 b, *Vernon's case*. *Finch's Law*, b. 1, ch. 3. That which was originally void, does not by lapse of time become valid. *Broom's Max.* 77, [132.] A maxim of very general importance in practice, in pleading, and in the application of legal principles to the occurrences of life. *Id. ibid.* Derived from the civil law, in which it is expressed, *Quod ab initio vitiosum est, non potest tractu temporis convalescere*. *Dig.* 50. 17. 29. *Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest*. *Dig.* 50. 17. 210. Wherever any contract or conveyance is void, either by a positive law, or upon principles of public policy, it is deemed incapable of confirmation. 1 *Story's Eq. Jur.* § 306. See 3 *Penn. St. (Barr's) R.* 151, Sergeant, J.

Quod ædificatur in area legata, cedit legato. Whatever is built on ground given by will, goes to the legatee. *Broom's Max.* [315.]

Quod alias bonum et justum est, si per vim vel fraudem petat:

**efficitur.** What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust. 3 Co. 78 a, *Fermor's case*. "The common law doth so abhor fraud and covin, that all acts, as well judicial as others, and which of themselves are just and lawful, yet being mixed with fraud and deceit, are, in judgment of law, wrongful and unlawful." *Id. ibid.* See 1 *Story's Eq. Jur.* § 239.

**Quod alias non fuit licitum, necessitas licitum facit.** What otherwise was not lawful, necessity makes lawful. *Fleta*, lib. 5, c. 23, § 14.

**Quod approbo non reprobo.** What I approve, I do not reject; I cannot approve and reject (Scotticè, approbate and reprobate) at the same time; I cannot take the benefit of an instrument, and at the same time repudiate it. *Broom's Max.* [558.] See *Approbate and reprobate*.

**Quod constat clare non debet verificari.** What appears clearly ought not to be verified, [averred, i. e. proved.] *Hardr.* 81, arg. 10 *Mod.* 150.

**Quod constat curiæ, opere testium non indiget.** That which appears to the court, needs not the aid of witnesses. 2 *Inst.* 662.

**Quod contra legem fit, pro infecto habetur.** That which is done against law, is regarded as not done at all. 4 Co. 31 a, *French's case*.

**Quod contra rationem juris receptum est, non est producendum ad consequentias, [consequentia.]** That which has been received or admitted against the reason of the law, is not to be drawn into precedents. *Dig.* 1. 3. 14. *Id.* 50. 17. 141. Adopted in the common law. 12 Co. 75. See *Bacon, de Augm. Scient.* lib. 8, app. 2.

**QUOD COMPUTET.** L. Lat. (That he account.) In practice. The first or interlocutory judgment in the action of account, requiring the defendant to account before auditors. 3 *Bl. Com.* 163. 1 *Story's Eq. Jur.* § 447. *Pulling on Merc. Acc.* 124.

**QUOD CUM.** L. Lat. (That whereas.) In pleading. The emphatic words used in the commencement of the old Latin declarations, where the charge was made (as it was in most actions,) by way of recital, and literally translated in the modern forms, "*that whereas*." *Pro eo videlicet quod cum*; "for this, to wit, that whereas," or in the later English forms, "for that whereas." It was an improper form in the

action of trespass, in which the matter complained of was required to be positively averred without recital; and the rule is still the same in regard to the English "*Whereas*." *Steph. Pl.* 388. 16 *Mees. & W.* 36.

**Quod cum,** however, was sometimes held to amount to an affirmative allegation. *Plowd.* 128.

**QUOD CONCESSUM FUIT.** L. Lat. Which was granted. A phrase in the old reports. 11 *Mod.* 68. See *Quod fuit concessum*.

**QUOD CURIA CONCESSIT.** L. Lat. Which the court granted. A phrase in the old reports. *Yearb.* M. 4 Hen. VI. 19. *Id.* M. 9 Hen. VI. 40. 6 *Mod.* 28.

**Quod demonstrandi causa additur rei satis demonstratæ, frustra fit.** That which is added, for the purpose of demonstration, to a thing already sufficiently demonstrated, is done to no purpose. 10 Co. 113 a, *Arthur Legat's case*.

**Quod dubitas, ne feceris.** What you doubt of, do not do. In a case of moment, especially in cases of life, it is safest to hold that in practice which hath least doubt and danger. 1 *Hale's P. C.* 300. *Bacon's Works*, iv. 487.

**QUOD EI DEFORCEAT.** L. Lat. (That he deforces him.) In old practice. A writ which lay for tenants in tail, or tenants in dower, or by the curtesy or for term of life, where they had lost their lands by default in a *præcipe quod reddat* brought against them. *F. N. B.* 155 B. *Reg. Orig.* 171.

**Quod est ex necessitate nunquam introducitur, nisi quando necessarium.** That which is of necessity is never introduced, unless when necessary. 2 *Rol. R.* 502. *Branch's Pr.*

**Quod est inconveniens aut contra rationem, non permissum est in lege.** That which is inconvenient, or against reason, is not permitted in law. *Co. Litt.* 178 a.

**Quod est necessarium est licitum.** What is necessary is lawful. *Jenk. Cent.* 76, case 45.

**Quod fieri debet facile præsumitur.** What ought to be done is easily presumed. *Halkerst. Max.* 153.

**Quod fieri non debet, factum valet.** That which ought not to be done, when done, is valid. *Broom's Max.* 81. See *Fieri non, &c.*

**QUOD FUIT CONCESSUM.** L. Lat. Which was granted. A phrase of frequent

occurrence in the old reports, denoting that an argument or point made by a counsel or judge, was acquiesced in, approved or allowed by the court. *Yearb. M. 1 Hen. VI. passim. Plowd. 32. Quod fuit concessum per totam curiam. 1 Co. 153 b. See Concessum.*

**Quod inconsulto fecimus, consultius revocemus.** What we have done without due consideration, upon better consideration we should revoke or undo. *Jenk. Cent. 116, case 30. Applied to a sheriff's return. Id. ibid.*

**Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori.** That which is valid in the less, shall be valid in the greater; and that which is not valid in the greater, shall neither be valid in the less. *Co. Litt. 260 a.*

**Quod in uno similium valet, valebit in altero.** That which is effectual in one of two like things, shall be effectual in the other. *Co. Litt. 191 a.*

**Quod ipsis qui contraxerunt obstat, et successoribus eorum obstat.** That which bars those who have made a contract, will bar their successors also. *Dig. 50. 17. 143.*

**QUOD JUSSU.** Lat. (Which [was done] by order.) In the civil law. The name of an action given to one who had contracted with a son or slave, by order of the father or master, to compel such father or master to stand to the agreement. *Halifax, Anal. b. 3, ch. 2, num. 3. Inst. 4. 7. 1. Dig. 15. 4.*

**Quod jussu alterius solvitur pro eo est quasi ipsi solutum esset.** That which is paid by the order of another, is the same as though it were paid to himself. *Dig. 50. 17. 180.*

**Quod meum est sine me auferri non potest.** That which is mine cannot be taken away without me, [without my assent.] *Jenk. Cent. 251, case 41.*

**Quod naturalis ratio inter omnes homines constituit, vocatur jus gentium.** That which natural reason has established among all men, is called the law of nations. *1 Bl. Com. 43. Dig. 1. 1. 9. Inst. 1. 2. 1. See Jus gentium.*

**Quod necessarie [sub] intelligitur non deest.** That which is necessarily understood is not wanting. *1 Bulstr. 71. If a man release to another "all actions," and do not say further "which he hath against him," this is as good a release as if these words were inserted. Shep. Touch. 334.*

**Quod [quicquid] necessitas cogit, defendit.**

What necessity compels, it justifies. *1 Hale's P. C. 54.*

**Quod non apparet, non est.** That which does not appear, is not. *2 Inst. 479. Jenk. Cent. 207, case 36. That which does not appear, must be taken in law as if it were not. Vaugh. 169. Broom's Max. 71, [122.]*

**Quod non capit Christus, capit fiscus.** What Christ [the church] does not take, the treasury takes. Goods of a *felo de se* go to the king. A maxim in old English law. *Yearb. P. 19 Hen. VI. 1.*

**QUOD NON FUIT NEGATUM.** L. Lat. Which was not denied. A phrase in the old reports. *Latch, 213. Otherwise expressed Quod nemo negavit; which no one denied. Yearb. H. 20 Hen. VI. 20.*

**Quod non habet principium, non habet finem.** That which has not a beginning has not an end. *Co. Litt. 345 a. 2 Bl. Com. 278. Applied to collation to benefices by lapse. Id. ibid. Broom's Max. [135.]*

**QUOD NOTA.** Lat. Which note; which mark. A reporter's note in the old books, directing attention to a point or rule. *Dyer, 23.*

**Quod nullius est, id ratione naturali occupanti conceditur.** That which is the property of no one is, by natural reason, given to the [first] occupant. *Dig. 41. 1. 3. Inst. 2. 1. 12. Adopted in the common law. 2 Bl. Com. 258. He who can first declare his intention of appropriating to his own use that which before belonged to nobody, and in pursuance of such intention, actually takes it into possession, shall thereby gain the absolute property in it. Id. ibid. See Id. 411. Broom's Max. 329, 330, [260.] 2 Kent's Com. 319.*

**Quod omnes tangit, ab omnibus [per omnes] debet supportari.** That which touches or concerns all, ought to be supported by all. *3 How. St. Trials, 878, 1087.*

**Quod per me non possum, nec per alium.** What I cannot do by myself, I cannot by another. *4 Co. 24 b. 11 Co. 87 a.*

**QUOD PARTES REPLACITENT.** L. Lat. (That the parties do replead.) The form of the judgment on award of a repleader. *2 Salk. 579.*

**QUOD PERMITTAT.** (That he permit.) In old English law. A writ which lay for the heir of him that was disseised of his common of pasture, against the heir of the disseisor. *Cowell. Termes de la Ley*

*Reg. Orig.* 155 b, 156. It was also a remedy for the enforcement of other privileges. *Id.* 155.

**QUOD PERMITTAT PROSTERNERE.**

L. Lat. (That he permit—to abate.) In old practice. A writ, in the nature of a writ of right, which lay to abate a nuisance. 3 *Bl. Com.* 221.

**Quod populus postremum jussit, id jus ratum esto.** What the people have last enacted, let that be the established law. A law of the Twelve Tables, the principle of which is still recognized. 1 *Bl. Com.* 89.

**Quod principi placuit, legis habet vigorem.** That which has pleased the prince, has the force of law. The emperor's pleasure has the force of law. *Dig.* 1. 4. 1. *Inst.* 1. 2. 6. A celebrated maxim of imperial law. See *Bract.* fol. 107. *Fleta*, lib. 1, c. 17, § 7. *Seld. Diss. ad Flet.* c. 3, §§ 2, 3, 4, 5.

**Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire.** The damage which one experiences from his own fault is not considered as his damage. *Dig.* 50. 17. 203.

**Quod quis sciens indebitum dedit hac mente, ut postea repeteret, repetere non potest.** That which one has given, knowing it not to be due, with the intention of re-demanding it, he cannot recover back. *Dig.* 12. 6. 50.

**QUOD RECUPERET.** L. Lat. That he do recover. The ordinary form of judgments for the plaintiff in actions at law. 1 *Arch. Pr.* 225. 1 *Burr. Pr.* 246. Expressed at length, in the old records,—*Ideo consideratum est quod prædictus A. RECUPERET versus præfatum C. &c.* 1 *Instr. Cler.* 14. Literally translated in the modern forms, “Therefore it is considered that the aforesaid [plaintiff] do recover against the aforesaid [defendant,]” &c.

**Quod remedio destituitur, ipsa re valet, si culpa absit.** That which is without a remedy, is valid by the [mere force of the] thing [or act] itself, if there be no fault. *Bacon's Max.* 40, reg. 9. Or, as the maxim may be analyzed, the mere act of a party (*ipsa res*), if no fault attach to it, (*si culpa absit*), will sometimes avail (*valet*) to give him a right for which the law has provided no express remedy, (*quod remedio destituitur*.) The principle of remitter and other extra-judicial remedies allowed by law. 3 *Bl. Com.* 20. *Broom's Max.* 101—104, [160.]

**Quod semel aut bis existit, prætereunt legis-**

**latores.** What happens once or twice, legislators pass over, [i. e. they do not provide for extraordinary cases.] A translation of a saying of Theophrastus quoted by Paulus in the Digests. *Tò γὰρ ἅπαξ ἢ δις παραβαίνουσιν οἱ νομοθέται.* *Dig.* 1. 3. 6. See *Ad ea quæ frequentius, &c.*

**Quod semel meum est, amplius meum esse non potest.** That which is once mine cannot be more mine. *Co. Litt.* 49 b. A party in possession needs not to have delivery of possession made to him. 2 *Bl. Com.* 314. *Shep. Touch.* 212. Dr. Wooddesson supposes this maxim to be taken from the Institutes. *Quod proprium est ipsius, amplius ejus fieri non potest.* *Inst.* 2. 20. 10. 1 *Wooddes. Lect. Introduct. Lect.* 5, p. lxxi. note.

**QUOD SI CONTINGAT.** L. Lat. That if it happen. Words by which a condition might formerly be created in a deed. *Litt. sect.* 330.

**Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem vel compensationem.** That which is granted or reserved under a certain form, is not [permitted to be] drawn into valuation or compensation. *Bacon's Max.* 26, reg. 4. That which is granted or reserved in a certain specified form, must be taken as it is granted, and will not be permitted to be made the subject of any adjustment or compensation on the part of the grantee. Quoted by Cowen, J. 2 *Hill's (N. Y.) R.* 423.

This maxim is best illustrated by Lord Bacon's own words and examples. “The law permitteth every man to part with his own interest, and to qualify his own grant as it pleaseth himself, and therefore doth not admit any allowance or recompense, if the thing be not taken as it is granted. So, in all profits à prendre, if I grant common for ten beasts, or ten loads of wood out of my copse, or ten loads of hay out of my meadows, to be taken for three years, he [that is, the grantee,] shall not have common for *thirty beasts*, or *thirty loads* of wood or hay the *third year*, if he forbear for the space of two years; here the *time* is certain and precise. So, if the *place* be limited, as if I grant estovers to be spent in such a house, or stone towards the reparation of such a castle, although the grantee do burn of his fuel, and repair of his own charge, yet *he can demand no allowance for that he took it not.*” *Bacon's Max.* 26, 27. See *Broom's Max.* 305, [350.]

**Quod subintelligitur non deest.** What is understood is not wanting. 2 *Ld. Raym.* 832.

**Quod tacite intelligitur deesse non videtur.** What is tacitly understood is not considered to be wanting. 4 *Co.* 22 a.

**Quod voluit non dixit.** What he intended he did not say, or express. He may have intended so, but he did not say it. An answer sometimes made in overruling an argument that the law-maker or testator meant so and so. 1 *Kent's Com.* 468, note. 4 *M. & S.* 522, arg. If a will be uncertain or unintelligible on its face, it is as if no will had been made. *Kent, C.* 1 *Johns. Ch. R.* 235.

**QUOD VI AUT CLAM.** See *Vi aut Clam.*

**Quomodo quid constituitur, eodem modo dissolvitur.** In whatever way a thing is constituted, in the same way is it dissolved; (a record by a record, writing by writing, parliament by parliament, parol by parol.) *Jenk. Cent.* 74, case 40.

**QUONIAM ATTACHIAMENTA.** L. Lat. (Since the attachments.) One of the oldest books in the Scotch law; so called from the two first words of the volume. *Bell's Dict.* Still sometimes cited in argument, in the Scotch courts. 7 *Wilson & Shaw's R.* 9.

**QUORUM.** Lat. Of whom; whereof. This genitive plural of the common pronoun *qui*, has in modern law become a substantive, being used in the titles of justices of the peace, and through this channel has finally been adopted as an ordinary word, to denote a certain number of persons whose presence is requisite at meetings of public or private bodies, for the transaction of business. The process by which this appropriation of the word has been effected may be traced as follows:

In the commissions by which justices of the peace were originally appointed, (and the form of which in England is still retained with little change,) they were all appointed jointly and severally, to keep the peace, and any two or more of them to inquire of, and determine felonies and other misdemeanors; in which number some particular justices, or one of them, were directed to be always included, and no business to be done without their presence, the words of the commission running thus: *QUORUM aliquem vestrum, A. B. C. D. &c. UNUM esse volumus; (of whom we will one or some of you, A. B. C. D. &c. to be one.)*

Whence the persons so named were usually called "justices of the *quorum*." The practice of appointing only a select number of justices, eminent for their skill and discretion, to be of the *quorum*, has in modern times been in a great degree discontinued, almost all of them being advanced to that dignity, and named in the *quorum* clause. 1 *Bl. Com.* 351. So that the title, though still retained, has lost much of its ancient significance.

The association, in this way, of the word *quorum*, with a particular number of justices, without whose presence no business could be done, led by a natural and easy transition to the adoption of the same word to express a required number of any description of associated persons, for the transaction of their proper business, which is its prevalent modern meaning.

**QUOT.** In old Scotch law. A twentieth part of the moveable estate of a person dying, which was due to the bishop of the diocese within which the person resided. *Bell's Dict.*

**Quoties dubia interpretatio libertatis est, secundum libertatem respondendum erit.** As often as [whenever] the interpretation of liberty is doubtful, the answer should be on the side of liberty. *Dig.* 50. 17. 20.

**Quoties idem sermo duas sententias exprimit, ea potissimum excipitur, quæ rei gerendæ aptior est.** Whenever the same language expresses two meanings, that should be adopted which is the better fitted for carrying out the subject matter. *Dig.* 50. 17. 67.

**Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi quo res de qua agitur in tuto sit.** Whenever the language of stipulations is ambiguous, it is most fitting that that [sense] should be taken by which the subject matter may be protected. *Dig.* 45. 1. 80.

**Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba [expressa] fienda est.** As long as there is no ambiguity in the words [of an instrument,] there should be no interpretation made against the [express] words. *Wingate's Max.* 24, max. 16. *Co. Litt.* 147 a. In the absence of ambiguity, no exposition shall be made which is opposed to the express words of the instrument. *Broom's Max.* [477.] A leading maxim in the construction of deeds and statutes. 2 *Bl. Com.* 379. 1 *Kent's Com.* 468, note. 2 *Id.* 555. See 1 *Duer on Ins.* 159, note. It is not, however, allowed to prevail so as to defeat the mani-

fest intent and object of the parties to an instrument, where it is clearly discernible on the face of the instrument, and the ignorance or blunder or mistake of the parties has prevented them from expressing it in the appropriate language. 1 *Story's Eq. Jur.* § 168.

QUOTUPLEX. Lat. Of how many kinds; of how many fold. A term of frequent occurrence in Sheppard's Touchstone. *Id.* 37, 50, 117, 160, *et passim*.

QUOUSQUE. Lat. As long as. An apt word of limitation in old conveyances. 10 *Co.* 41 b, *Mary Portington's case*. See 1 *Eden*, 114.

Until. "Whether it were for an absolute seizure, or merely *quousque*, until such an act done." *Le Blanc, J.* 2 *East*, 260.

QUOVIS MODO. Lat. In whatever manner. Lord Ellenborough, 10 *East*, 476.

QUUM. Lat. When. *Quum de lucro duorum quærat, melior est causa possidentis*. When the question is as to the gain of two persons, the title of the party in possession is the better one. *Dig.* 50. 17. 126. 2. For other maxims, see under *Cum* and *Quando*.

QUYKE. In old records. Quick; living; a quick or live beast. *Cowell*.

QUYR. L. Fr. [Lat. *corium*.] In old English law. Leather; a hide or skin. *Yearb.* II. 6 *Edw.* II. 192.

QY. L. Fr. Who, which. *Kelham*.

## R.

RACES, *Rases*. L. Fr. Pulled down. *Kelham*.

RACHIAT. Fr. Ransom; relief. *Ord. Mar.* liv. 3, tit. 3, art. 19. *Emerig. Tr. des Ass.* ch. 12, sect. 21. *Guyot, Inst. Feod.* ch. 5.

RACHATER. L. Fr. To redeem; to re-purchase, (or buy back.) *Kelham*.

RACHETUM. L. Lat. [from O. Fr. *rachapter*, *rachater*, *racheter*, to redeem; from *achater*, or *acheter*, to buy.] In old Scotch law. A pecuniary satisfaction or composition for an offence, answering to the Saxon *weregild*. *Stat.* 1 *Rob. Reg. Scot.* c. 3. *Spelman*.

Theft-bote, or thief-bote. *Id.* *Skene de Verb. Signif. Stat.* 2 *Rob. Br.* c. 7, cited *ibid*.

RACHIMBURGH, *Rachinburgii*. L. Lat. [from Germ. *rachn*, or *racht*, Sax. *race*, a cause, matter or argument.] In old European law. *Rachenburgers* or *Rakenburgs*; judges among the *Salians*, *Ripuarians* and some other nations of Germany

who sat with the count (*comes*) in his court called *mallum*, and were generally associated with him in all matters. *L. Salic.* tit. 52, 59. *L. Ripuar.* tit. 32, § 3. *Capitul. Carol.* lib. 5, c. 14. *Spelman*. The word was found by *Spelman* in an old MS. copy of the Laws of Canute. *Montesquieu* writes it *rathimburies*. *Esprit des Loix*, liv. 30, c. 18.

RACK RENT. A rent of the full value of the tenement, or near it. 2 *Bl. Com.* 43. 1 *Chitt. Gen. Pr.* 228.

RADECHENISTRES. A word used in Domesday Book, which *Spelman* interprets to mean *freemen*. *Domesd.* fol. 18, *Titt. Glouc. Berchelay. Spelman*.

RADOUB. Fr. In French law. Repair. The repairing or repair of a vessel. *Ord. Mar.* liv. 2, tit. 9, art. 3.

RAENCON, *Raancon*, *Ranceoun*. L. Fr. A ransom, or fine. *Ou par ranceoun ou par amercement. Art. sup. Cart.*

RAGEMAN, *Ragman*. A statute, so called, of justices assigned by Edw. I. and his council, to go a circuit through all England, and to hear and determine all complaints of injuries done within five years next before Michaelmas, in the fourth year of his reign. *Spelman*.

*Ragman*, *Rageman* or *Raggeman*, (L. Lat. *Raggemannus*,) occurs in old records in the sense of a blank charter, or recognizance. *Barringt. Obs. Stat.* 215, note [u.]

RAGMAN'S (or RAGIMUND'S) ROLL. In Scotch law. A roll or record said to have been made by direction of one *Ragimund*, a legate from Rome, who, calling before him all the beneficed clergymen in the kingdom, caused them, on oath, to give in the true value of their benefices, according to which they were afterwards taxed by the court of Rome.\* *Whishaw*. After being taken away by the English, it was restored, with other deeds and instruments, by Edward III. *Baker's Chron.* fol. 127. *Cowell*.

RAIL FENCES are real property, and pass under the word *land*. 1 *Comstock's R.* 564.

RAIN. L. Fr. A ring. *Par rain et par baston*; by ring and staff. *Kelham*.

RAINE. L. Fr. Queen. *Kelham*.

RAISE. To create, or constitute. To raise a use, is to create it. 1 *Steph. Com.* 332, 333. 2 *Crabb's Real Prop.* 462, *et seq.* Raisable; that may be raised. Lord Hardwicke, C. 6 *Mod.* 489.

RAN. Sax. In Saxon and old English law. Open theft, or robbery, (*aperta ra-*

*pina.*) *Leg. Saxon. Canuti R. c. 58. Spelman. Lamb. Archaion. fol. 125.*

**RANGER.** In forest law. A sworn officer of the forest, whose office chiefly consists in three points: to walk daily through his charge, to see, hear and inquire as well of trespasses as trespassers in his bailiwick; to drive the beasts of the forest, both of venery and chace, out of the de-afforested into the forested lands; and to present all trespasses of the forest at the next courts holden for the forest. *Cowell. Manwood, cited ibid.*

**RANK.** In English law. Excessive; too large in amount; as a *rank modus*. 2 *Bl. Com. 30.*

**RANKING.** In Scotch law. The arrangement of the claims of creditors in a certain order, showing their legal priorities; a statement showing the order in which the claims of creditors are to be paid out of a fund.\* *Bell's Dict.* Answering to the English *marshalling*.

**RANSOM.** [L. Fr. *raunsom, raunsome, rancon, raencon*; L. Lat. *redemptio*.] Redemption from the power of another. A sum paid to redeem a person from captivity, imprisonment or punishment; or to redeem property from seizure.

In old English law. A species of fine. According to Lord Coke, "it is all one with a fine, for by the payment of the fine, the party *redeems* himself from imprisonment that attends the fine, and then there is an end [*finis*] of the business." *Co. Litt. 127 a.* See 4 *Bl. Com. 380.* Britton uses both terms in close connection. *Surpeyne de raunsome et de fyn*; on pain of ransom and of fine. *Britt. c. 11.*

A severe or heavy kind of fine, beyond the ordinary amount. The old rule was that where a statute spoke both of a *fine* and *ransom*, the ransom should be treble to the fine at least. *Cowell. Dyer, 232. 4 Bl. Com. 380.* Spelman calls it *multa gravissima*, the severest kind of fine.

**RANSOM.** In international law. The redemption of captured property from the hands of an enemy, particularly of property captured at sea. 1 *Ken's Com. 104.*

A sum paid or agreed to be paid for the redemption of captured property. *Id. 105.* Otherwise called a *ransom debt*. *Id. 107.*

The contract by which a ransom is agreed to be paid. The instrument containing such contract. Otherwise called a *ransom contract*, and a *ransom bill*. *Id. 104—107.*

**RANSOM BILL.** In international law. A contract by which a sum of money is agreed to be paid for the ransom of property captured at sea, and containing also other stipulations as to the return of the vessel, &c. 1 *Ken's Com. 105, 106.* A ransom bill, when not locally prohibited, is a war contract, protected by good faith and the law of nations. *Id. 104.*

Ransoms are little known in the commercial law of England, being prohibited by statute except in some peculiar cases. They are, however, recognized among other maritime nations, and have never been prohibited in the United States. *Id. 104, 105.* See 2 *Gallison's R. 325.*

**RAP.** L. Fr. *Rape. Rap de femme. Britt. c. 1.*

**RAPE.** [L. Lat. *rapa*.] In English law. An intermediate division between a shire and a hundred; or a division of a county, containing several hundreds. 1 *Bl. Com. 116. Cowell.* It seems to be peculiar to the county of Sussex. *Id. ibid.*

**RAPE.** [L. Fr. *rap de femme*; L. Lat. *raptus mulierum*.] In criminal law. The violation, or carnal knowledge of a woman forcibly, and against her will. 4 *Bl. Com. 210. Cowell. Spelman, voc. Raptus. 1 Russell on Crimes, 675. Wharton's Am. Crim. Law, § 1124, 1156.*

**RAPE OF THE FOREST.** [L. Lat. *raptus forestæ*.] In old English law. Trespass committed in a forest by violence. *Cowell. Spelman. LL. Hen. I. c. 11.*

**RAPE-REEVE.** In English law. The chief officer of a rape, (q. v.) 1 *Bl. Com. 116.*

**RAPER.** Lat. In old English law. To ravish. See *Rapuit*.

**RAPINA.** Lat. [from *rapere*, to drag, or carry away forcibly.] In the civil law. The violent taking from the person of another, of money or goods for the sake of gain; robbery from the person. *Hallifax, Anal. b. 2, c. 23, num. 1, 2. Heinecc. Elem. Jur. Civ. lib. 4, tit. 2, § 1071.*

In old English law. Open and violent larceny from the person; robbery. *Stat. 14 Car. II. c. 22. Cowell. 4 Bl. Com. 242.*

**RAPTOR.** L. Lat. [from *rapere*, to ravish.] In old English law. A ravisher. *Fleta, lib. 2, c. 52, § 12.*

**RAPUIT.** Lat. [from *rapere*, to ravish.] In old English law. Ravished. A technical word in old indictments. 2 *East, 30. Wharton's Am. Crim. Law, § 401.*

**RASE.** [L. Lat. *raseria*, from Lat. *rasus*, shaved or scraped.] In old English law. Strike; struck measure; that in which the commodity measured was made even with the top of the measure, by *scraping* or *striking* off all that was above it.\* An old ordinance for bakers, brewers, &c. provided that toll should be taken "by the *rase*, and not by the *heap* or *cantel*." Cowell quotes the provision, but strangely overlooks the meaning it so clearly expresses, and makes *rase* (*raseria*) to be "a measure of corn, now disused."

To **RASE.** [from Lat. *radere*, to scrape.] To rub or scrape; to rub out. An indenture was said to be *rased*. *Perkins*, ch. 2, ss. 122, 123, *et seq.* A word was said to be *rased*. *Id.* s. 128. See 3 *P. Wms.* 433, *arg.*

**RASURA.** L. Lat. [from Lat. *radere*, to scrape.] In old English law. A rasure. *Fleta*, lib. 4, c. 10, §§ 3, 4.

**RASURE.** [L. Fr. *rassure*, *rasoure*, from Lat. *rasura*, from *radere*, to scrape.] A scraping off; the removal of one or more words from an instrument, by scraping the writing off or out. One of the modes by which a deed or other instrument may be avoided, or rendered of no effect. 2 *Bl. Com.* 308. *Shep. Touch.* 55, 68, 71. *Fleta*, lib. 6, c. 29, § 4. *Rasure* is properly distinguished from *obliteration*, which is effected by marking out the writing with pen and ink, or blotting it out by other means; but the terms are sometimes used as synonymous. See 18 *Johns. R.* 499.

**RASUS, Rasum.** L. Lat. [from *radere*, q. v.] In old English law. Rased; crased. *Fleta*, lib. 2, c. 54, § 12.

Struck; scraped off. *Mensura rasa*; struck measure. *Fleta*, lib. 2, c. 82, § 1.

**RASUS.** L. Lat. In old English law. A rase; a measure of onions, containing twenty fiones, and each fionis twenty-five heads. *Fleta*, lib. 2, c. 12, § 12.

**RATA.** L. Lat. In old English law. A rate; a proportion. 4 *Mod.* 79. *Juxta ratam præd'*; according to the rate aforesaid. *Dyer*, 82, (Fr. ed.)

**RATAM REM HABERE.** Lat. In the civil law. To hold a thing ratified; to ratify or confirm it, (*comprobare, agnoscere.*) *Dig.* 46. 8. 12. 1, *et per tot.*

**RATE.** An assessment. *Callis on Sewers*, Appendix, 352.

**RATE OF EXCHANGE.** In commercial law. The actual price at which a bill, drawn in one country upon another coun-

try, can be bought or obtained in the former country, at any given time. *Story on Bills*, § 31.

**RATER.** An assessor. *Laws of the Col. of New Plymouth*, A. D. 1643, 1689.

**RATIFICARE.** Lat. [from *ratus*, valid, and *facere*, to make.] In old conveyancing. To ratify. *Ratificasse*; have ratified. A formal word in deeds of confirmation. *Litt. sect.* 515. Lord Coke observes that "it is equipollent to *confirmare*." *Co. Litt.* 295 b.

**RATIFICATION.** [from Lat. *ratificare*, q. v.] The confirmation of a previous act done either by the party himself or by another; confirmation of a voidable act. See *Story on Agency*, §§ 250, 251. 2 *Kent's Com.* 237.

**RATIHABITIO.** Lat. [from *ratus*, approved, and *habere*, to hold.] In civil and old English law. A holding as approved; approval or ratification. *Dig.* 46. 8. *Ratihabitio mandato æquiparatur.* Ratification is equivalent to express command. *Dig.* 46. 3. 12. 4. See *Id.* 50. 17. 152. 2. See *Omnis ratihabitio, &c.* *Story on Agency*, § 239. *Per ratihabitionem quæ retrotrahitur ad disseysinam*; by the ratification which relates back to the disseisin. *Bract.* 174 b.

**RATIO.** Lat. Reason; a reason; the reason. See *Ratio legis*.

An account. *Reddere rationem*; to give an account. *Cowell*.

A cause. See *Ratione*.

**RATIO LEGIS.** Lat. The reason or occasion of a law; the occasion of making a law. *Blackst. Law Tr.* 3. Grotius distinguishes between *ratio* and *mens*, the meaning or intent of a law. *De Jur. Bell.* lib. 2, c. 16, § 8. *Ratio legis est anima legis; mutata legis ratione, mutatur et lex.* The reason of a law is the soul of the law; when the reason of a law is changed, the law also is changed. 7 *Co.* 7 a, *Milborn's case*. *Ratio legis est anima legis.* The reason of a law is the soul of a law. *Jenk. Cent.* 45, case 86.

**RATIONABILIS.** Lat. [from *ratio*, q. v.] In old English law. Reasonable. *Quam longum esse debet* [rationabile tempus] *non definitur in lege, sed pendet ex discretione justitiariorum*; how long ["a reasonable time"] ought to be, is not defined in law, but rests in the discretion of the justices. *Co. Litt.* 56 b. See *De rationabili, De rationabilibus*.

**RATIONE.** Lat. By reason; on account.

*Ratione impotentiae*; on account of inability. A ground of qualified property in some animals *feræ naturæ*, as in the young ones, while they are unable to fly or run. 2 *Bl. Com.* 394. *Hale's Anal.* sect. xxvi.

*Ratione loci*; by reason of place. A ground of ownership in rabbits and hares. *Hale's Anal.* sect. xxvi.

*Ratione privilegii*; by reason of privilege. A ground of ownership in birds or beasts of warren. *Id. ibid.*

*Ratione soli*; on account of the soil; with reference to the soil. Said to be the ground of ownership in bees. 2 *Bl. Com.* 393.

*Ratione tenuræ*; by reason of tenure; as a consequence of tenure. 3 *Bl. Com.* 230. 1 *M. & S.* 435.

A phrase in old pleading. Not the same as "by reason of being owner and proprietor." *Le Blanc, J. 1 M. & S.* 441. *Ratione tenuræ* implies *ex vi termini*, something originally annexed to the holding. *Id. ibid.*

RAUNSON, *Raunsome*. L. Fr. In old English law. Ransom; a fine; a severe kind of fine. *Sur peyne de raunsome*; on pain of ransom. *Britt. c.* 11. *Per raunsome simple ou graund, solonc le fait*; by an ordinary or a great ransom, according to the fact. *Id. ibid.* *Puny par prison et greve raunsom.* *Id. c.* 48.

RAVISHED. In criminal practice. A material word in indictments for rape. *Whart. Am. Crim. Law*, § 401.

RAVISHMENT. [Lat. *raptus*.] In old English law. A forcible taking away, as of a ward. *Co. Litt.* 79 b. See 3 *Reeves' Hist. Eng. Law*, 179. It was applied to both sexes. *Co. Litt. ub. sup.* 3 *Bl. Com.* 141. A woman might be ravished without carnal knowledge. *Jones, J. Latch*, 218.

RAZE. To erase. In the great case of proceedings in parliament relative to the liberty of the subject, (3 *Car. I. A. D.* 1628) Mr. Selden, who had taken an active part in the debate, was charged with "razing a record." 3 *How. St. Trials*, 156.

RAZON. Span. [Lat. *ratio*.] In Spanish law. Cause, (*causa*.) *Las Partidas*, part. 4, tit. 4, l. 2.

RE. FA. LO. An abbreviation of *recordari facias loquelam*, (q. v.)

RE, *verbis, scripto, consensu, traditione, Junctura, vestes sumere pacta solent.*

From the thing [itself,] from words, from

writing, from consent, from delivery, from union, agreements usually take their vestments. A couplet formerly in use, framed to express (in aid of the memory) the six different *modes* in which obligation might be contracted, which were fancifully termed its *vestments* or garments, that is, the forms in which it was *clothed*. It is twice quoted by Bracton, who explains the six forms in detail. *Bract. fol.* 16 b. *Id. fol.* 99—101. It is thus expressed in the prose of Britton: *Obligation doit estre vestue de v. maneres de garnementz; de chose, de parole, de escript, de unite de volounte, de bail, de joynture.* *Britt. c.* 28. It seems to be a mere extension of the fourfold division of the Institutes: *Aut re, aut verbis, aut literis, aut consensu.* *Inst.* 3. 14. 2. And see *Dig.* 44. 7. 52.

RE, *Rei, Rey.* L. Fr. King; a king. *Kelham*.

REAL. [L. Fr. *reale*; Lat. *realis*, from *res*, a thing.] In the civil law. Relating or belonging to, or founded upon a *thing*, (*res*), as distinguished from personal, which related to a *person*, (*persona*.) *Calv. Lex.* This is the proper sense of the word.

In the common law. Relating or belonging to, arising from or founded upon lands, tenements or hereditaments. See *Real action*, *Real estate*, *Things real*. This sense of the word is derived from the feudal law, in which land was considered of paramount importance to all other *things*, as subjects of property, claiming as it were, the epithet of *res*, κατ' ἐξοχὴν. The barbarous Latin word *realis* occurs (though rarely) in the civil law, in the sense first above given, but is used by Bracton and subsequent writers in the common law sense of the term. See *Realis*.

REAL. L. Fr. [from *re*, king.] In old English law. Royal; regal; belonging to the king. *Yearb. P.* 6 *Edw. III.* 48.

REAL ACTION. [L. Fr. *accion reale*; L. Lat. *actio realis*, *placitum reale*.] An action for the recovery of real property; an action relating to real property; an action whereby the plaintiff, or demandant, claims the specific recovery of any lands, tenements or hereditaments.\* 3 *Steph. Com.* 459. 3 *Bl. Com.* 117, 118.

This term seems to be an accommodation of the *actio in rem* of the civil law, *res* being used in the feudal sense of *land*. The *res* for which the civil law action lay, might be a personal chattel, as well as land. *Inst.* 4. 6. 1, 14. *Story's Conf. of Laws*, § 530.

The threefold division of actions into real, personal and mixed, is obviously taken from the civil law. *Inst.* 4. 6. 1, 20.

**REAL ASSETS.** Lands or real estate in the hands of an heir, chargeable with the payment of the debts of the ancestor. 2 *Bl. Com.* 244, 302. 2 *Williams on Exec.* 1436. See *Assets by descent*.

**REAL CHYMIN.** L. Fr. In old English law. The royal way; the king's highway, (*regia via*.) *Yearb.* P. 6 Edw. III. 48.

**REAL CONTRACT.** In the civil law. A contract in which the obligation arose from the thing (*ex re*) itself, which was the subject of it. *Inst.* 3. 14. 2. *Id.* 3. 15. Real contracts were those in which, besides the consent of the parties, the delivery of some thing was required to perfect the obligation. *Hallifax, Anal.* b. 2, c. 15, num. 1.

In the common law. A contract respecting real property, as a lease of land for years. 3 *Co.* 22 a, *Walker's case*.

**REAL ESTATE.** Landed property, including all estates and interests in lands which are held for life or some longer period of duration.\* An estate in fee or for life in land, not comprehending terms for years or any interest short of a freehold. 3 *Kent's Com.* 401.

In New-York, the term "*real estate*" has been declared by statute to be equivalent in meaning to "*land*," (1 *R. S.* [387,] 379, § 2,) and to "*lands, tenements and hereditaments*," (*Id.* [750,] 741, § 10;) and has been otherwise "construed to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seised or possessed thereof, or in any manner entitled thereto, and except leases for years, and estates for the life of another person." *Id.* [744, 755,] 745, § 27.

**REAL ESTATE BROKER.** One who engages in the purchase and sale of real estate as a business and occupation, and so holds himself out to the public in that character and capacity. 26 *Penn. St. R.* 138.

**REAL EVIDENCE.** [Lat. *evidentia rei vel facti*.] All evidence of which any object belonging to the class of things is the source; *persons* also included, in respect of such properties as belong to them in common with things. 3 *Benth. Jud. Ev.* 26. This term has been recently in-

troduced from the civil law. *Best on Evid.* 221, § 178.

**REAL INJURY.** In the civil law. An injury arising from an unlawful act, as distinguished from a verbal injury which was done by words. *Hallifax, Anal.* b. 2, c. 25, num. 3, 4.

**REAL PROPERTY** consists of lands, tenements and hereditaments. 1 *Hilliard's Real Prop.* 49.

**REAL RIGHT.** In Scotch law. A right of property in a subject; a *jus in re*. *Bell's Dict.*

**REAL (or PRÆDIAL) SERVITUDE.** In the civil law. A right which one estate or piece of land (*prædium*) owes to another estate. See *Prædial servitude*.

**REAL STATUTES.** In the civil law. Statutes which have principally for their object, property, and which do not speak of persons, except in relation to property. *Story's Conf. of Laws*, § 13. See *Statute*.

**REAL THINGS, (or THINGS REAL)** In the common law. Such things as are permanent, fixed and immoveable, which cannot be carried out of their place, as lands and tenements. 2 *Bl. Com.* 15. Things substantial and immoveable, and the rights and profits annexed to, or issuing out of them. 1 *Steph. Com.* 156.

This expression is, in strictness, clearly pleonastic, the sense of *thing (res)* being already implied in the word *real*, as will at once appear by giving it a Latin form, *res reales*. See *Real*.

**REAL WRONG.** In old English law. An injury to the freehold; "that which meddleth with the freehold otherwise than it ought; and is a discontinuance or ouster." *Finch's Law*, b. 3, ch. 4.

**REALE.** L. Fr. Real. *Accions personnelles ou reales*. *Britt.* fol. 1 b.

**REALE, Real.** L. Fr. Royal. *Kelham*.

**REALIS.** L. Lat. In old English law. Real; relating to land. *Quædam [actiones] sunt reales, et quædam sunt personales*; some actions are real, and some are personal. *Bract.* fol. 159 b. *Secundum quod placitum fuerit reale vel personale*; according as the plea is real or personal. *Id.* fol. 1 b. *Fleta*, lib. 1, c. 1, § 1. *Id.* lib. 2, c. 13, § 4.

**REALITY.** In foreign law. That quality of laws which concerns property or things, (*quæ ad rem spectant*.) *Story's Conf. Laws*, § 16. See *Personality*.

**REALTY.** The quality of being *real*,

or relating to lands and tenements.\* Things real. 1 *Steph. Com.* 156.

REASONABLE. Agreeable to reason; just; proper. See *Reasonable time*.

Ordinary or usual. *Reasonable* care is ordinary care, (q. v.) *Reasonable* common imports what is usual. Lord Ellenborough, 6 *M. & S.* 49. See *Id.* 69.

REASONABLE PART. In old English law. That share of a man's goods which the law gave to his wife and children after his decease. 2 *Bl. Com.* 492.

REASONABLE TIME cannot be made the subject of abstract definition. What is a reasonable time must be determined by the circumstances of the particular case. See 22 *Alabama R.* 414.

RE-ASSURANCE. A contract made by the first insurer of property with another insurer, by which he has the entire sum he has insured, *re-assured* to him, for the purpose of obtaining indemnity against his own act.\* 3 *Ken's Com.* 278, 279. Otherwise called *re-insurance*. 1 *Phill. on Ins.* 146.

Re-assurance is prohibited in England, except in special cases, by statute 19 Geo. II. c. 37, § 4.

RE-ATTACHMENT. [L. Lat. *re-attachamentum*.] In old English practice. A second or repeated attachment. *Cowell. Reg. Jud.* 35.

REAUME, *Reaugme, Reame*. L. Fr. Realm. *Kelham*.

REAYER. L. Fr. To have again, or have back; to re-have. *Britt. c.* 93.

RE-BAIL. In old English law. To redeliver. 3 *Leon.* 150. See *Bail*.

REBEAUX, *Rebeaux, Rebeux*. L. Fr. Rebels; disobedient persons. *Kelham*.

REBELLIO. Lat. In old English law. Rebellion. *Stat. Marlbr. c.* 7.

REBELLION, *Commission of*. In equity practice. A process of contempt issued on the non-appearance of a defendant. See *Commission of rebellion*.

REBELLIS. Lat. In old English law. A rebel. *Stat. Marlbr. c.* 7.

REBOTABLE. L. Fr. [from *reboter*, q. v.] That may be rebutted, put or thrust back, or barred; barrable, rebuttable. *Le madle est recevable, et la femme rebotable*; the male is receivable, (may be admitted,) and the female *rebuttable*, (may be rejected.) *Britt. c.* 119.

REBOTER, *Rebouter*. L. Fr. To put or thrust back; to repel; to bar; to rebut; to reject. *Reboter l'assise*; to bar

the assise. *Britt. c.* 77. *Si jco puisse reboter l'un, jco reboteray l'autre*; if I may rebut the one, I shall rebut the other. *Yearb. T.* 9 Edw. III. 12.

REBUT. [from L. Fr. *reboter*, q. v.] In pleading and evidence. To repel; to meet or counteract the effect of opposing allegations or evidence. See *Rebutter*.

REBUTTABLE PRESUMPTION. In the law of evidence. A presumption which may be rebutted by evidence. Otherwise called a *disputable* presumption. A species of legal presumption which holds good until disproved. *Best on Pres.* § 25. 1 *Greenl. Ev.* § 33.

REBUTTER. [from L. Fr. *reboter*; to thrust back, repel or bar.] In pleading. A defendant's answer of fact to a plaintiff's surrejoinder; the third pleading in the series on the part of the defendant. *Steph. Pl.* 59. 3 *Bl. Com.* 310. *Co. Litt.* 303 b.

*Rebutter*, in the old books, had also the general sense of *bar* or *estoppel*. *Bro. Abr. Barre*, num. 23, 25. *Cowell. Co. Litt.* 365 a. *Shep. Touch.* 182. And it is still occasionally used in this sense. Story, J. 1 *Sumner's R.* 263.

REBUTTING EVIDENCE. Evidence adduced on the part of a plaintiff or prosecutor to repel or counteract evidence on the part of a defendant or prisoner.

RECAL. In practice. To reverse a judgment on writ of error for error in fact. 1 *Arch. Pr.* 281. 16 *Wendell's R.* 48.

RECAPTION. [from Lat. *recaptio*, from *re*, again, and *captio*, a taking.] A retaking, or taking back. A species of remedy by the mere act of the party injured, (otherwise termed *reprisal*,) which happens when any one has deprived another of his property in goods or chattels personal, or wrongfully detains one's wife, child or servant. In this case, the owner of the goods, and the husband, parent or master may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace. 3 *Inst.* 134. 3 *Bl. Com.* 4. 3 *Steph. Com.* 358.

In English practice. A writ to recover damages against a person who, pending a replevin for a former distress, distrains again for the same rent or service.\* 3 *Bl. Com.* 150.

RECEDERE. Lat. [from *re*, back, and *cedere*, to go.] In old practice. To go back; to recede; to draw back. *Possunt contrahentes recedere de contractu*; the

contracting parties may draw back from the contract. *Fleta*, lib. 2, c. 58, § 3.

To retire or be dismissed from court. *Quietus recedet*; shall go quit. *Fleta*, lib. 1, c. 21, § 7. *Recedunt sine die*; go without day. *Id.* lib. 2, c. 39, § 1. *Recedet inde reus quietus imperpetuum*; the defendant shall go quit thereof forever. *Id.* c. 63, § 12.

*Receditur a placitis juris, potius quam injuriæ et delicta maneat impunita.* Positive rules of law (as distinguished from maxims or conclusions of reason,) will be receded from, [given up or dispensed with] rather than crimes and wrongs should remain unpunished. *Bacon's Max.* 55, reg. 12. See *Placita juris*.

RECEIPT. [L. Fr. *resceit*.] An acknowledgment in writing of having received a sum of money, goods or other valuable consideration; an acquittance. As to its effect, see 1 *Greenl. Evid.* § 212. An acknowledgment of the receipt of the consideration money constitutes a formal clause in all deeds of conveyance.

In old practice. Admission of a party to defend a suit, as of a wife on default of the husband in certain cases. *Litt.* sect. 668. *Co. Litt.* 352 b. Called, also, *defensio juris*. *Id.* *ibid.*

RECEIPTMENT. [L. Fr. *resceitment*, q. v.] In old English law. The receiving or harboring a felon knowingly, after the commission of a felony. *Stat. Westm.* 1, c. 14. 2 *Inst.* 182. Answering to the Scotch *resetting* or *reset*, (q. v.)

RECEIPTOR. In practice. A person to whom goods levied on by a sheriff are delivered, on his undertaking (called a receipt,) to deliver the same to the sheriff, on demand, or to pay the amount of the execution, with costs. 5 *Hill's R.* 588, 590. See *Story on Bailm.* § 124.

RECEIVER. L. Fr. To receive; to admit. *Si la feme pria destre receive et soit receive*; if the wife pray to be received and is received. *Litt.* sect. 668.

RECEIVER. [L. Lat. *receptor*.] In criminal law. One who receives stolen goods from thieves, and conceals them. *Cowell*. This was always the prevalent sense of the word in the common as well as the civil law. *Id.*

RECEIVER. In equity practice. An officer appointed by a court of chancery or equity, to take possession of the property of a defendant, or of property which is the subject of litigation, and to hold the same

and apply the profits, or dispose of the property itself under the direction of the court; with the view of more effectually securing the rights of the complainant or other parties who may be entitled.\*—An indifferent person between the parties, appointed by the court to receive the rents, issues or profits of land or other thing in question in the court, pending the suit, where it does not seem reasonable that either party should do it. *Wyatt's Prac. Reg.* 355. The appointment of a receiver is applied for by bill, petition or motion, and is a common preliminary proceeding to the winding up of the affairs of a partnership or incorporated company, as well as an ordinary adjunct to a judgment creditor's bill. See *Edwards on Receivers*, 1—18.

A receiver is an officer of the court which appoints him, but cannot sue in a foreign jurisdiction for the property of the debtor. 17 *Howard's R.* 322. See the distinction between a receiver in chancery under a creditor's bill, and an assignee in bankruptcy explained. *Id.* *ibid.*

RECEIVER (of MONEYS.) In old law. (L. Fr. *recevor* or *rescevor de deniers*; L. Lat. *receptor denariorum*.) A term used in connection with *bailiff*, (q. v.)

RECENS INSECUTIO. L. Lat. In old English law. Fresh suit; fresh pursuit. Pursuit of a thief immediately after the discovery of the robbery. 1 *Bl. Com.* 297. *Recens secta*; fresh suit. *Fleta*, lib. 1, c. 24, § 3.

RECEPTAMENTUM. L. Lat. [L. Fr. *recettement*.] In old English law. Receiptment; the receiving (Scotch, *resetting*,) or harboring a felon after the commission of the crime. *Bract.* fol. 152 b. *Fleta*, lib. 1, c. 31, § 8.

RECEPTARE. L. Lat. In old English law. To receive; to harbor (a felon.) *Jurare debent quod utlagatos, murtheritores, robbatores et burglatores non receptabunt, nec eis consentient*; ought to swear that they will not harbor outlaws, murderers, robbers and burglars, nor will consent [or be privy] to them. *Bract.* fol. 115 b.

RECEPTATOR. Lat. [from *receptare*, q. v.] In civil and old English law. A receiver or harbinger of a robber or other felon. *Dig.* 47. 16. *Bract.* fol. 115 b. *Fleta*, lib. 1, c. 38, § 16. *Id.* lib. 2, c. 52, § 9. *Feud. Lib.* 2, tit. 53, § 8.

RECEPTOR. Lat. [from *recipere*, to receive.] In old English law. Receiver; a receiver. *Fleta*, lib. 2, c. 33.

*Receptor denariorum*; receiver of moneys. *Id.* lib. 2, c. 70, §§ 7, 9.

*Receptrix*. A female receiver. *Yearb. M.* 19 Hen. VI. 10.

RECESSUS. Lat. [from *recedere*, to go back.] In old English law. A going from; a going off or out of land. *Cum libero accessu et recessu*; with free access and recess, [ingress and egress.] *Bract.* fol. 231 b.

RECESSUS MARIS. Lat. In old English law. A going back; reliction or retreat of the sea. *Hale de Jur. Mar.* pars 1, c. 6.

RECETOUR, *Recettour*. L. Fr. In old English law. A receiver or harbinger of a felon; an accessory after the fact. *Britt.* c. 24. One who received and concealed a returned outlaw. *Id.* c. 12.

RECETTEMENT. L. Fr. In old English law. Receiptment; the receiving and harboring a felon. *Del consentment ou del recettement de ceux felons à escient*; of consenting to, or harboring such felons knowingly. *Britt.* c. 1.

RECHASER. L. Fr. To drive back. *Yearb. M.* 11 Hen. VI. 4.

RECHATE. L. Fr. Ransom. *Faire rechat' du char et du saunk*; to make ransom of flesh and of blood. *Yearb. M.* 7 Edw. II. 214.

RECHATER. L. Fr. To ransom; to buy back. *Kelham*.

RECIDIVE. Fr. In French law. The state of a person who commits a second offence, after condemnation or punishment for a previous one; a relapse. *Bouvier*.

RECITAL. [L. Lat. *recitatio*.] In conveyancing. The formal preliminary statement in a deed or other instrument, of such deeds, agreements or matters of fact as are necessary to explain the reasons upon which the transaction is founded. 2 *Bl. Com.* 298. The recital is contained in the premises (q. v.) of a deed, and usually commences with the formal word "*whereas*," which, when there are several recitals in succession, is repeated accordingly; "and *whereas*." As to its effect, see 1 *Leon.* 122. And see *Burr. Sett. Cas.* 23.

In pleading. The statement of matter as introductory to some positive allegation, beginning, in declarations, with the words "For that *whereas*," or in the old Latin forms with *pro eo quod cum*, (q. v.) See *Steph. Pl.* 388, 389.

RECLAIMING BILL. In Scotch practice. VOL. II.

tice. A bill or written pleading, stating the grounds on which a judgment of the Lord Ordinary, or of the whole court, is expected to be altered. *Bell's Dict.*

RECLAMER. L. Fr. To reclaim; to make a claim; to challenge. *Kelham*.

RECOGNITIO. L. Lat. [from *recognoscere*, q. v.] In old English law. An assise. *Magna Charta*, 9 Hen. III. c. 12. *Bract.* fol. 164 b. *Fleta*, lib. 4, c. 1, § 7.

A jury, as distinguished from an assise proper. 1 *Reeves' Hist. Eng. Law*, 367.

The verdict of an assise. *Cowell*. Strictly the act of the jury in hearing and inquiring into the truth of the case, in order to the making up of their verdict.

A recognizance. See *Recognizance*.

An acknowledgment. *Cowell*.

RECOGNITOR. L. Lat. [from *recognoscere*, q. v.] In old English law. A person impanelled on an assise, as *jurator* was one impanelled on a jury. *Recognitores in assisis, juratores in juratis.* *Bract.* fol. 351 b. *Id.* fol. 111 b.

RECOGNITURA. L. Lat. In old practice. To recognize. See *Recognoscere*.

RECOGNIZANCE, *Recognisance*. [from L. Fr. *reconisaunce*; L. Lat. *recognitio*, qq. v.] In practice. An acknowledgment upon record; an acknowledgment of a debt upon record.\* An obligation of record, entered into before some court of record, or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, or criminal court, to keep the peace, to pay a debt, or the like. It resembles a bond, but differs from it in being an acknowledgment of a former debt upon record. 2 *Bl. Com.* 341.

The undertaking of special bail in a civil action at law, of which the bail piece is a memorandum.\* 3 *Bl. Com.* 291.

In old practice. An assise; the inquiry or verdict of an assise. *Cowell*. See *Reconisaunce, Recognitio*.

To RECOGNIZE. [L. Lat. *recognoscere*, q. v.] In practice. To examine, or try; to inquire so as to know. "The assise came to recognize if," &c., were the first words of the record of an assise of novel disseisin. 9 *Co.* 1 a, *Dowman's case*.

This old word is still retained in the entry of the award of jury process on the record, the sheriff being directed to summon a jury "to recognize, &c.," that is, to recognize or try the truth of the issue between the parties. 3 *Bl. Com.* 352. See *Recognoscere*.

**RECOGNOSCERE.** Lat. [from *re*, again, and *cognoscere*, to know; L. Fr. *reconustre*.] In old practice. To acknowledge. *Idem B. venit in eadem curia, et recognovit totam prædictam terram, cum pertinentiis, esse jus ipsius A.*; the said B. came into the said court, and acknowledged the whole of the said land, with the appurtenances, to be the right of the said A. *Bract. fol. 73 b.*

To recognize; that is, to try or examine, as a jury; to inquire so as to know the truth. *Parati sacramentò recognoscere si B. pater C. de N. fuit seysitus*; prepared on oath to recognize if B. the father of C. of N. was seised. *Id. fol. 294. Ad recognoscendum super sacramentum suum si prædictus C. prædictum D. robbavit*; to recognize upon their oath, if the said C. robbed the said D. *Id. fol. 111 b, 112.* See *Fortescue, de L. L. Angliæ*, c. 25, note. *Assisa venit recognitura*, (the assise came to recognize,) were the first words of the record of an assise of novel disseisin. *Litt. sect. 234.*

The word *recognoscere* is said to have originally had, in this application, its literal sense,—to know again, to call to remembrance, to declare upon recollection; juries having been originally composed of witnesses, or persons cognizant, of their own knowledge, of the fact in question. *Steph. Pl. Appendix, Note (40.)*

**RECONISAUNCE.** L. Fr. A recognition (to keep the peace.) *Britt. c. 16.*

The inquisition of an assise or jury. *Petite assise est reconisaunce de xii jorours, del droit le pleyntyfe sur la possession. Id. c. 42.*

**RECONQUIS.** L. Fr. Recovered; re-obtained. *Britt. c. 59.*

**RECONUSTRE.** L. Fr. To recognize. *A reconustre sur leur serment*; to recognize upon their oath. *Britt. c. 45.*

**RECONVENIRE.** Lat. In the canon and civil law. To make a cross demand upon the actor, or plaintiff. 4 *Reeves' Hist.* 14, and note (r.)

**RECONVENTIO.** Lat. [from *reconvenire*, q. v.] In the civil and canon law. A cross demand by the *reus* (defendant) upon the *actor* (plaintiff); a proceeding in the nature of a cross bill in equity. *Hallifax, Anal. b. 3, c. 1, n. 40. Calv. Lex. Fleta*, lib. 4, c. 22, § 9. *Gilb. For. Rom.* 45, 46. *Story's Eq. Pl.* § 402. Considered to be the origin of a cross bill. *Id. ibid.*

**RECONVENTION.** A cross demand. A term used in practice in the states of Louisiana and Texas, derived from the *reconventio* (q. v.) of the civil law. Reconvention is not identical with set-off, but more extensive. See 6 *Texas R.* 414. 5 *Id.* 501, 504.

**RECOPILACION DE INDIAS.** Span. A collection of Spanish colonial law, promulgated A. D. 1680. See *Schmidt's Civ. Law*, Introd. 94.

**RECORD.** L. Fr. and Eng. [L. Lat. *recordum*, from Fr. *recorder*, Lat. *recordari*, to call to mind, to recite or testify on recollection.] In practice. An instrument containing an account of the proceedings of a court of justice, particularly in an action at law, and intended as an authentic memorial of such proceedings. A history of the proceedings in an action at law, consisting of entries of the various acts of the parties and of the court, arranged in the order of their occurrence, expressed in the formal language prescribed by precedent, connected together by the peculiar entries called *continuances*, and terminating with the judgment of the court upon the whole matter.

In England, the peculiar *material* upon which the record has always been written, forms an essential part of the definition of the word. Hence Lord Coke has defined a record to be “a memorial or remembrance in *rolls of parchment*, of the proceedings and acts of a court of justice.” *Co. Litt.* 260 a. And Mr. Serjeant Stephen observes that “a record signifies a *roll of parchment*, upon which the proceedings or transactions of a court are entered or drawn up by its officers, and which is then deposited in its treasury, *in perpetuam rei memoriam*.” 3 *Steph. Com.* 583. In the United States, paper has universally supplied the place of parchment as the material of the record, and the *roll form* has, on that account, fallen into disuse; but, in other respects, the forms of the English records have, with some modifications, been generally adopted. In a late case, a record was defined “a memorial of a proceeding or act of a court of record, entered in a roll for the preservation of it.” 1 *Hempstead's R.* 214.

\* \* The use of *records*, in the technical sense just considered, is altogether peculiar to the common law, and they have always been regarded by that law with very peculiar consideration. Constituting

the only strict and proper proof of the proceedings of the court in which they are preserved, they are also regarded as proof of so transcendent and absolute a nature, as to admit of no contradiction, or, in Lord Coke's language, they "import in themselves such incontrollable credit and verity, as they admit no averment, plea or proof to the contrary." *Co. Litt.* 260 a. 3 *Steph. Com.* 583. See 25 *Alabama R.* 116. And the peculiar privilege of some courts to have these memorials has, of itself, created the great leading distinction, equally recognized in English and American law, between *courts of record* and *courts not of record*. 3 *Bl. Com.* 24.

The practice of *recording* (thus peculiar to the common law,) has been very satisfactorily shown by Mr. Serjeant Stephen to be essentially of Norman origin. *Steph. Pl. Appendix*, Note (11.) The term *record*, is itself, as he observes, in its immediate derivation, French; or rather, it is a French word adopted in English without change, as will appear from the use of it in Britton. *Et en tiel cas volons que lour roudes porten record*; and in such case we will that their rolls shall bear or carry record, that is, shall have the force of record. *Britt.* c. 1. *Enroulement de court que porte record*; enrollment of a court which bears record, that is, of a court of record. *Id.* c. 28. *Record* is from *recorder*; and the latter word anciently signified, in the Norman law, *to recite or testify on recollection*, as occasion might require, what had previously passed in court, which was the duty of the judges and other principal persons who presided at the *placitum*,—thence called *recordeurs*. *Steph. Pl. Appendix*, Note (11.) In fact, all over France, at this early period, the only mode of proving what took place in the courts, seems to have been by the testimony of *witnesses*, by whom, as Montesquieu observes, they proved what had been already done, said, or judicially decreed, (*on prouvoit par temoins ce qui s'étoit déjà passé, dit, ou ordonné en justice*.) This was what they called *the proceeding by record*, (*par ce que s'appelloit la procedure par record*.) *Esprit des Loix*, liv. 28, c. 34. The same thing conclusively appears from the Assises de Jerusalem, referred to by Mr. Stephen.

The proper original of the English record is considered by the last named author to have been an occasional memorandum (dis-

tinctly mentioned in the Assises de Jerusalem,) drawn up by the Francic pleader to confirm the recollection of his judges, and which, by a gradual progress, (not now to be traced,) took the shape of an official contemporaneous minute of the proceedings; and, no longer merely subordinate to a record or judicial report, became itself invested with that name and character. "Whether this change," observes Mr. Stephen, "had fully taken place at the date of Glanville's treatise, (in the reign of Henry II.) that work does not enable us accurately to decide.—However, we find at least very shortly *after* this period, the practice of *recording*, in the present sense of the term, was in full operation." The series of records, now extant, begins with the reign of Richard I. and the earliest of them are to be found in the collection called *Placitorum Abbreviatio*. *Steph. Pl. Appendix*, Note (11.) Bracton frequently refers to the *irrotulationes* (enrollments,) as important parts of the proceedings in an action, and occasionally gives forms of them. *Bract.* fol. 16, 292, 299 b. The same author, in citing the judicial decisions of that period, distinctly mentions the *rotuli* or rolls on which they were recorded, sometimes distinguishing in what part of the roll the case was to be found.

It may not be out of place to advert here, briefly, to the principal features of this very important judicial instrument. The ancient record was, as its form clearly indicates, a *contemporaneous minute* of the proceedings in an action, drawn up by an officer of the court, containing an entry of every act done in court, either by the parties or by the court itself, which, (as every thing done in an action was then done in open court,) embraced all the proceedings in the suit,—the appearances and pleadings of the parties, prayer and allowance of imparlance, prayer and allowance of oyer, award of jury process, proceedings at the trial, verdict of the jury and judgment of the court, with the various intermediate and incidental proceedings. Its *contemporaneous* character appears every where on its face, the proceedings being uniformly entered in language of the *present* tense, and as of *present* occurrence. The plaintiff "*complains*" and "*brings suit*;" the defendant "*comes and defends*," and "*prays judgment*;" the "*jury come*" and "*say upon their oath*;" and the judgment of the court is, that "*it is considered*," &c

Another distinctive feature of the old record was its *continuances*, or the entries of the adjournments of the court from one day or term to another, by which the parties were temporarily dismissed and appointed to appear again, and by which its various parts were at the same time most effectually connected together. It was this peculiar principle of construction, by which the record was made to *follow the action* step by step, and to reflect *every proceeding* in it *just as it occurred*, which gave it from an early period the stamp of the very highest authority as a judicial memorial. Kept constantly under the eye of the court, and by its own officer, it necessarily became the evidence in itself, of what it contained, admitting, indeed, of no extrinsic proof whatever. The great and obvious importance of the record in this particular, led to a corresponding degree of care in framing it. By the consummate skill of the Anglo-Norman pleaders, its language was gradually elaborated to the highest degree of precision and uniformity, its various parts studiously adapted to each other and logically fitted together, until, by the force of constant repetition, and under the sanction of the courts for a succession of centuries, the whole instrument settled at last into a fixed form of expression, which admitted of (as it required) no variation. In this way, the record came to be, at an early period, and before the discontinuance of oral pleadings, next after the original writ, the most important document in an action, prescribing indeed the form of all the other proceedings, which constituted its component parts. This is very forcibly shown in the fact that, when written pleadings were introduced, they were framed precisely as they had before appeared on the record, and were virtually mere extracts from it. *Steph. Pl.* 35, (Am. ed. 1824.) Hence arose what has always been a leading principle of practice, that every proceeding in an action intended or required to appear on the record, must be framed in the language of the record, and with reference to its place on that instrument, or, in other words, must be framed with the same exactness as the record itself. See *Anthon's Law Student*, 266, 267, 273.

Two circumstances, in addition to what has been mentioned, contributed to stamp the record with that character of *immutability* which has accompanied it down to modern times, and almost to the present

day. One was the circumstance of its being kept in *Latin*, a language admitting of no variation, and the other, the character of *inviolability*, which preserved it from the slightest degree of alteration after it had been once made up.

The substitution of English for Latin as the language of the record, and of ordinary writing for the "ancient and immutable court hand," which took place in the reign of George II. were innovations upon the ancient system apparently demanded by the times, but viewed by highly competent judges of the period with much apprehension as to their effect upon the durability of the record, as a memorial of the proceedings in an action. See *Court hand*. How far these apprehensions have been realized in the particular way anticipated, is for English practitioners to determine; but that they have been realized in the general result of impairing the character of the record by reducing it to the level of an *ordinary instrument*, privileged in no peculiar manner from change, seems apparent in the material alterations which have at length been effected, in England, in the structure of this once inviolable and immutable memorial of judgment. These changes consist principally in omitting all or most of those entries by which the several parts of the record were formerly connected together, (including the entire system of *continuances*,) by omitting the formal commencements and conclusions of pleadings, which were in fact portions of the record itself, connecting with the pleadings, and by the general modification of the language of the pleadings themselves. In this way the unity of the record has been effectually broken up, and the symmetry of its parts and the uniformity of its language, once thought to constitute its peculiar value, have been obviously impaired.

In some of the United States, similar modifications of the form of the record have been adopted, going in some instances indeed to much greater lengths; and, on the whole, the modern tendency undoubtedly is to place this instrument in point of dignity and importance, far below the position it once occupied. Latterly, however, the courts have evinced a determination to maintain the record in its proper formal character. See 11 *Howard's R.* 272, 288. 2 *Wallace, Jr.* 569. 1 *Hempstead's R.* 214. 3 *Wisconsin R.* 362.

RECORD, *Debt of*. A debt which ap-

pears to be due by the evidence of a court of record; such as a judgment, a recognition, &c. 2 *Bl. Com.* 465.

**RECORD, Trial by.** In practice. A mode of trial in use where a matter of record is pleaded in any action, as a judgment, and the opposite party pleads *nul tiel record*, that there is no such matter of record existing. The issue arising hereon is tried merely by the record itself, that is, by the inspection of the court, without witnesses or jury; and accordingly upon such issue, the record alleged is ordered to be brought into court, that it may be seen and inspected.\* 3 *Bl. Com.* 331. 3 *Steph. Com.* 583, 584. A record must be tried by itself, and importing verity, if a party desires to controvert it, the record alone must be relied upon for that purpose, by the introduction of a more perfect record. 28 *Mississippi R.* 398.

**RECORDARE.** L. Lat. In American practice. A writ to bring up judgments of justices of the peace. 3 *Jones' (N. C.) Law R.* 491.

**RECORDARI.** L. Lat. In old English law. To record. *Sed quid si curia recordetur quod querens servitium petitem recognovit, in curia ipsa*; but what, if the court should record that the plaintiff acknowledged the service demanded in the court itself. *Bract.* fol. 157 b. *Recordata*; recorded. *Fleta*, lib. 2, c. 13, § 9.

**RECORDARI FACIAS LOQUELAM.** L. Lat. (You cause the plaint to be recorded.) In English practice. A writ by which a suit or plaint in replevin may be removed from a county court to one of the courts of Westminster Hall. 3 *Bl. Com.* 149. 3 *Steph. Pl.* 522, 666. So termed from the emphatic words of the old writ, by which the sheriff was commanded to *cause the plaint to be recorded*, and to have the record before the superior court. *Reg. Orig.* 5 b.

**RECORDATOR.** L. Lat. In English law. Recorder. 12 *East*, 559.

**RECORDATUR.** L. Lat. (It is recorded.) In old English practice. An entry made upon a record, in order to prevent any alteration of it. 1 *Ld. Raym.* 211.

**RECORDER.** L. Fr. In Norman law. To recite or testify on recollection what had previously passed in court. This was the duty of the judges and other principal persons who presided at the *placitum*,—thence called *recordeurs*. *Steph. Pl. Ap-*

*pendix*, Note (11.) In the Assises de Jerusalem, it is one of the directions given to litigants, that they should collect as many of their own friends as possible in court, and request them to be attentive to what was said, with a view of enabling themselves to retain and record it properly (*si que il sachent bien le recorder*) at the time of judgment or trial. *Assis. de Jerus.* c. 44.

In old English law. To state, recite or relate, as a judge did to a jury. *Britt.* c. 52.

**RECORDER.** [L. Lat. *recordator*.] In old English law. A person whom the mayor or other magistrate of any city or town corporate, having jurisdiction or a court of record within their precincts, associated to him for his better direction in matters of justice and proceedings according to law. *Cowell*.

In modern law. The chief judicial officer of a borough or city, exercising within it, in criminal matters, the jurisdiction of a court of record. *Brande*. The chief criminal judge of a city.

In some of the United States, as in Pennsylvania and Ohio, registers of deeds are called *recorders*. *Purdon's Dig.* 219, (ed. 1857.) *Swan's Statutes*, 789, ch. 96, (ed. 1854.)

**RECORDUM.** L. Lat. In old English and Scotch law. A record. *Si curia recordetur quod querens, &c. tunc querens recordum illud dedicere poterit, et cognitionem contra recordum curiæ*; if the court should record that the plaintiff, &c. then the plaintiff may deny that record, and the acknowledgment, against the record of the court. *Bract.* fol. 157 b. See *Fleta*, lib. 2, c. 13, § 9. *Id.* c. 53, § 3. *Skene de Verb. Sign.*

*Recorda sunt vestigia vetustatis et veritatis*; records are the traces of antiquity and of truth. 2 *Roll. R.* 296.

**RECOUPE, Recoop.** [from L. Fr. *recouper*, to cut again, or to cut out and keep back.] To diminish a claim for damages by cutting out or keeping back a part.\* *Cowell* interprets it, "to defalk or discount." Where a man had ten pounds issuing out of certain lands, and he disseised the tenant of the land, in an assise brought by the disseisee, the disseisor might *recoupe* the rent in the damages, in order to avoid circuitry of action. 5 *Co.* 30 a, *Coulter's case*. An executor *de son tort* is not allowed to retain or *recoupe* any

part of the deceased's goods to satisfy his own debt. *Id. ibid.* 3 *Campb.* 282.

This old word has been revived to a considerable extent in modern law. "Where a man brings an action for breach of a contract between him and the defendant, and the latter can show that some stipulation in the same contract was made by the plaintiff, which he has violated, the defendant may, if he choose, instead of suing in his turn, *recoupe* his damages, arising from the breach committed by the plaintiff; whether they be liquidated or not. The law will *cut off* so much of the plaintiff's claim as the cross damages may come to." Cowen, J. 22 *Wendell's R.* 156. See *Recoupment*.

RECOUPER. The old form of *Recoupment*, (q. v.)

RECOUPMENT. [from *recoupe*, q. v.] In practice. Defalcation or discount from a demand. A keeping back something which is due, because there is an equitable reason to withhold it. Reduction or diminution of damages in an action on a contract, from breach of warranty or defects in the performance. The principle of *recoupment* has been established in the state of New-York in several cases of recent occurrence. 22 *Wendell's R.* 155. 3 *Hill's R.* 171, 174. 5 *Id.* 63, 71, 76. 7 *Id.* 53. 3 *Kernan's R.* 151. It is distinguished from set-off. 3 *Hill's R.* 171. See 2 *Kent's Com.* 472. *Sedgw. Meas. of Dam.* ch. 17. In the late Vermont case of *Barber v. Chapin*, (28 *Vermont R.* 413, 415,) Redfield, C. J. observed that "the modern use of this term is confessedly so indefinite as to afford no reliable grounds upon which it is safe to proceed." See the different applications of the term shown. *Id. ibid.*

RECOUSSE. Fr. In French law. Recapture. *Emerig. Tr. des Ass.* ch. 12, sect. 23.

RECOVER. [from L. Fr. *recoverer*, from Lat. *recuperare*, qq. v.] To obtain by course of law; to obtain by means of an action, or by the judgment rendered in an action; to succeed in an action. The ordinary judgment for a plaintiff in an action at law is "that he do *recover*." See *Quod recuperet*.

RECOVEREE. In old conveyancing. The party who suffered a common recovery; the tenant of the freehold, against whom lands were recovered by the process of a common recovery, and by that means

conveyed to the party recovering.\* 2 *Bl. Com.* 357—359.

RECOVERER, *Recovrir*. L. Fr. [from Lat. *recuperare*, q. v.] To recover; to obtain by action, or course of law. *Le vil-leyn ne purra jammes recoverer contre son seignour*; the villein may never recover against his lord. *Britt. c.* 43. *Le seignour del soil recovers damages vers eux*; the lord of the soil shall recover damages against them. *Id. ibid.* Hence the English *recover*, which form indeed appears in the French of Littleton. *Si home recover debt ou damages.* *Litt. sect.* 504.

RECOVEROR. In old conveyancing. The party recovering lands by the process of a common recovery; the party to whom the lands were, by this process, conveyed.\* 2 *Bl. Com.* 357, 358.

RECOVERY. The obtaining a thing by the judgment of a court, as the result of an action brought for the purpose.

A species of conveyance now abolished or disused. See *Common recovery*.

RECREANT. L. Fr. and Eng. [L. Lat. *recreantus*, q. v.] In old English law. Cowardly; faint-hearted; yielding to an adversary; acknowledging defeat. "An odious word," by which a combatant in the trial by battel, acknowledged himself to be vanquished, or acknowledged his guilt. See 3 *Bl. Com.* 340. See *Recreantus*, *Craven*.

RECREANTIA. L. Lat. In old English law. Recreancy; cowardice; submission to an adversary; acknowledgment of guilt. *Bract. fol.* 153. See *Recreantus*. Called in Glanville and Fleta, *recreantisia*. *Glanv. lib.* 2, c. 3. *Fleta, lib.* 1, c. 38, § 18.

RECREANTUS. L. Lat. In old English law. Recreant; cowardly; yielding to an adversary; acknowledging defeat or guilt. *Non sufficit quod appellatus cognoscat se fuisse socium suum, vel latronem, vel aliquid consimile ad recreantiam, nisi dicat illud verbum odiosum quod recreantus sit*; it is not enough that the appellee acknowledges himself to have been his accomplice, or a robber, or any thing like to recreancy, unless he say that odious word, that he is *recreant*. *Bract. fol.* 153.

RECRIMINATION. [from *re*, back, and *crimen*, an accusation; L. Lat. *compensatio criminis*.] A counter-accusation; an accusation made by an accused party against the accuser.\* A set-off by a de-

fendant of equal guilt on the part of the complainant in a suit for a divorce, on the ground of adultery. *Shelf. Marr. & Div.* 440.

RECTARE, *Rettare, Retare*. L. Lat. In old English law. To accuse; to charge. See *Arrectare*.

RECTATIO. L. Lat. In old records. A claim of right, or appeal to law for the recovery of it. *Chartul. Radinges*, MS. cited in *Cowell*.

RECTATUS, *Rettatus*. L. Lat. [from L. Lat. *rectum*; L. Fr. *rette*, an accusation.] In old English law. Suspected; accused; charged; summoned to answer an accusation, (*ad rectum vocatus*.) *Spelman. Glanv.* lib. 1, c. 31. In the old writ *De odio et atia*, given by Bracton, the sheriff was commanded to summon a jury to inquire "*utrum A. de N. captus et detentus in prisoa nostra de tali loco, de morte B. unde rectatus et appellatus est, rectatus sit vel appellatus de morte illa odio et atia*," &c.; whether A. of N. taken and detained in our prison of such a place, for the death of B. whereof he is accused and appealed, be accused or appealed of that death by hatred and malice, &c. *Bract.* fol. 123. In the form of the same writ in the Register, *rettatus* is the word employed. *Reg. Orig.* fol. 133 b. See *Rettatus*. Rectati *de morte hominis*; charged with the death of a man. *Bract.* fol. 117 b. Rectati *de latrocinio*; accused of robbery. *Id. ibid.* See *Arrect*, *Arrectare*.

Skene translates this word, "summoned to court to do right," (*vocatus in jus ut rectum faciat*.) *Sken. not. ad Leg. Burg.* c. 80. But this is not approved by *Spelman*. It occurs several times in a special writ issued by Henry III. to certain justices in eyre, and which is given at length in *Blount*.

RECTE. Lat. In the civil law. Rightly. *Dig.* 50. 16. 73. As to the interpretation of this word, see *Id. ibid.*

RECTITUDO. L. Lat. In Saxon and old English law. A right or legal due. *Rectitudines*; rights. *LL. Edw. Conf.* c. 30. *LL. Hen. I.* c. 6. *Cowell*.

RECTO, *De*. L. Lat. Of right. See *De recto*.

RECTOR. Lat. and Eng. [from *regere*, to govern.] In English ecclesiastical law. A person having the charge or care of a parish church; a parson; literally, the governor of a church. 1 *Bl. Com.* 384. The word is as old as the time of Bracton,

who applies it in precisely its modern sense. *Et sciendum quòd tantum rectoribus ecclesiarum parochialium, qui instituti sunt per episcopos et ordinarios, ut personæ*; and it is to be known that it [the assise of *Utrum*] lies only for rectors of parish churches, who are instituted by the bishops and ordinaries, as parsons. *Bract.* fol. 285 b. See *Fleta*, lib. 4, c. 20, §§ 9—11. It appears to have been used on the continent at an early period. *Spelman*, voc. *Rector ecclesiæ*.

RECTOR PROVINCIÆ. Lat. In the Roman law. The governor of a province. *Cod.* 1. 40.

RECTORY. [L. Lat. *rectoria*.] In ecclesiastical law. The office of a rector. *Spelman*, voc. *Rectoria*.

An entire parish church, with all its rights, glebes, tithes and other profits whatsoever; otherwise commonly called a benefice. *Id.*

A rector's manse, or parsonage house, (*pro mansione seu domicilio rectoris*.) *Id.*

RECTUM. Lat. In old English law. Right; law. *Nulli vendemus, nulli negabimus, aut differemus justitiam vel rectum*. To none will we sell, to none will we deny justice or right. *Magna Charta*, c. 29. See 2 *Inst.* 56. *De recto deficere*; to fail of right; to fail in doing right or justice. *Bract.* fol. 330 b. A term peculiar to the law of England. *Quod in jure scripto jus appellatur, id in lege Angliæ rectum esse dicitur*; what in the written (civil) law is called *jus*, in the law of England is said to be *rectum*. *Fleta*, lib. 6, c. 1, § 1.

A right claimed by a party; a right to land claimed by the writ called a writ of right, (*breve de recto*.) *Præcipimus vobis [tibi], quod sine dilatione plenum rectum teneatis [teneas] tali de tanto terræ*, &c.; we command you that without delay you do full right to such a one, of so much land, &c. *Reg. Orig.* 1. *Bract.* fol. 328.

RECTUM, *Rettum*. L. Lat. [from L. Fr. *rette*.] In old English law. An accusation or charge of crime; suspicion of crime. *Spelman*. *Illi qui per commune rectum sunt retenti, si plegios invenire possunt standi ad rectum si quis adversus eos loqui voluerit, liberentur*; those who are detained upon common accusation [of the county or hundred,] if they can find pledges to stand to the accusation [that is to appear and answer it,] if any one choose to speak against them, shall be discharged. *Rog. Hoved. Annal.* part. post.

fol. 273 a, n. 40. This passage, given by Spelman from Hoveden, is repeated by the editor of Cowell, but misinterpreted to mean a *trial*.

In the Register, *rettum* occurs as a form of this word, closely resembling the Fr. *rette*, from which it is undoubtedly derived. *Reg. Orig.* 77 b. See *Rettum*.

RECTUS. Lat. Right; upright; straight; straight forward; direct. See *Rectus in curia*, *Linea recta*.

RECTUS IN CURIA. L. Lat. Right in court; free from charge or impeachment; in a proper position before a court; regularly in court.\* One that stands at the bar, and no man objects any thing against him. *Cowell*. One who has cleared himself of a charge, as by reversing an outlawry in an action, and is thereby restored to his former position.\* *Id.*

*Rectus*, in this still common phrase, has not only the sense of *proper*, *lawful* or *regular*, but also the radical meaning of *upright*, expressive of the posture of one who "stands at the bar," and in the confidence of innocence, boldly confronts an adversary. The figurative term "*stand*" is used in a variety of applications, both in ancient and modern law. See *Stand*, *Stare*, *Persona standi in judicio*.

RECUPERARE. Lat. To recover; to regain; to get again what one has lost, (*quod amissum in nostram potestatem redigere*.) *Calv. Lex*.

RECUPERATIO. Lat. [from *recuperare*, q. v.] In old English law. Recovery; restitution by the sentence of a judge, of a thing that has been wrongfully taken or detained. *Co. Litt.* 154 a. According to Lord Coke, "it is all one with *evictio*, in the civil law." *Id. ibid.*

RECUPERATORES. Lat. [from *recuperare*, to recover.] In the Roman law. Persons appointed by the prætor, in private actions, to examine the facts, or try the cause. They seem to have been peculiar to actions in which the recovery of some certain thing was demanded by the actor or plaintiff, and are thus distinguished by Dr. Hallifax, from the *judices*, properly so called. *Hallifax, Anal.* b. 3, c. 8, num. 11.

RECUSANTS. [Lat. *recusantes*, from *recusare*, to refuse.] In English law. Persons who refused to attend the service of the Church of England. 4 *Bl. Com.* 56. Chiefly papists, and otherwise termed *popish recusants*. *Id. ibid.* Persons refusing

to conform to the ceremonies of the Church of England, or take the oath appointed against papists. 1 *Steph. Com.* 103.

RECUSATIO JUDICIS. Lat. In the civil and canon law. Refusal or rejection of a *judex* or judge; disapprobation of, or objection to a person proposed or assigned as a judge. *Cod.* 3. 1. 16. *Decretal.* lib. 2, tit. 28, c. 26. Supposed to correspond to the *challenge of a juror*, in the practice of the common law. 3 *Bl. Com.* 361.

In Bracton's time, a judge or justice might be objected to, and refused for sufficient cause, as if he were of kin to the demandant, or his dependent, (*homo vel subditus*), relative or friend, or the enemy of the tenant, (defendant) or if he had been the party's counsellor, or counter, (*narrator*) in that or another cause. *Bract.* fol. 412. But the law has long been otherwise. *Co. Litt.* 294 a. 3 *Bl. Com.* ub. sup.

RECUSATIO TESTIS. Lat. In the civil law. Rejection of a witness, on the ground of incompetency. *Best on Evid.* *Intro.* 60, § 60.

RED BOOK OF THE EXCHEQUER. [L. Lat. *Liber Ruber Scaccarii*.] In English law. An ancient manuscript volume kept in the exchequer, containing several miscellaneous treatises; an account of the number of hides of land in several counties before the Conquest; a collection of the escuages under Henry II. Richard I. and John; a description of the ceremonies used at the coronation of Queen Eleanor, wife to Henry III. and other matters. *Cowell*. It is supposed by Mr. Madox to have been compiled by Alexander de Swereford, Archdeacon of Shrewsbury, and an officer in the exchequer in the latter end of Henry II. 1 *Reeves' Hist. Eng. Law*, 220, note. But the compiler is otherwise described as Archdeacon of Salop, and treasurer of St. Paul's, who died A. D. 1246, in the 31st year of Henry III. *Cowell*. See 2 *Show*. 299.

REDDENDO. L. Lat. [from *reddere*, to render.] In old conveyancing. Rendering. The formal word by which a rent was reserved to a grantor. *Reddendo inde per annum, tantum, ad certos terminos tales*; rendering therefor so much per year, at such certain times. *Bract.* fol. 35. *Fleta*, lib. 3, c. 14, § 7. See *Co. Litt.* 47 a. *Bell's Dict.* This was a more grammatically correct expression than *reddendum*, which was afterwards used, as it agreed with "*tali*," the grantee, to whom it referred.

## REDDENDO SINGULA SINGULIS.

Lat. Rendering or assigning separate things to separate persons, or separate words to separate subjects; making distribution; construing distributively. 5 Co. 7 b, *Justice Windham's case*. An expression used to denote the separation and distribution of the words of an instrument among several subjects, so as to give effect to the intention of the parties. 1 *Spence's Chancery*, 540. Lord Ellenborough, 11 *East*, 451.

REDDENDUM. L. Lat. [from *reddere*, q. v.] In conveyancing. Rendering; yielding. The technical name of that clause in a conveyance by which the grantor creates or reserves some new thing to himself, out of what he had before granted, as "rendering therefor yearly, the sum of ten shillings, or a pepper corn," &c. 2 *Bl. Com.* 299. 1 *Steph. Com.* 450, 451. *Perkins*, ch. 10, ss. 625, 630, 631. That clause in a lease in which a rent is reserved to the lessor, and which commences with the word "yielding," or "rendering."

REDDENS CAUSAM SCIENTIÆ. L. Lat. (Giving the reason of his knowledge.) In Scotch practice. A formal phrase used in depositions, preceding the statement of the reason of the witness' knowledge. 2 *How. Stat. Trials*, 715.

REDDERE. Lat. In old English law. To render; to pay; to give or yield. *Ad debitum reddendum*; to pay the debt. *Mag. Cart.* 9 Hen. III. c. 8. *Et si capitalis debitor defecerit in solutione debiti, non habens unde reddat, aut reddere nolit, cum possit*; and if the principal debtor fail in payment of the debt, not having wherewith to pay, or shall refuse to pay when able. *Id. ibid.* See *Reddendum*, *Redditus*.

In the civil law. To give back, (*retro dare*;) to restore. *Calv. Lex.* Lord Coke, in giving the etymology of *redditus*, adopts this sense of the word. *Reddere est quasi retro dare*. 10 Co. 128 a, *Clun's case*. See *Redditus*. *Reddere*, however, had in the civil law the sense of giving also. *Verbum reddendi quamquam significatum habet retro dandi, recipit tamen et per se dandi significationem*. *Dig.* 50. 16. 94. And see *Id.* 89.

REDDIDIT SE. L. Lat. (He has rendered himself.) In old English practice. A term applied to a principal who had rendered himself in discharge of his bail. 7 *Mod.* 98. *Holthouse*.

REDDITARIUS. L. Lat. [from *redditus*, q. v.] In old records. A renter; a tenant. *Cowell*.

REDDITARIUM. L. Lat. [from *redditus*, q. v.] In old records. A rental, or rent-roll. *Cowell*.

REDDITION. In old practice. A judicial confession and acknowledgment that the land or thing in demand belonged to the demandant, or, at least, not to the person so surrendering. *Cowell*.

REDDITUS. L. Lat. [from *reddere*, to render, yield or pay.] In old English law. A rent; a payment; a thing rendered, paid or yielded. *Item potest quis esse tenens meus reddendo mihi redditum, et possum redditum illum dare alicui, et attornare tenentem meum ad reddendum redditum illum meo feoffato per manum suam*; also a man may be my tenant by rendering (or paying) to me a rent, and I may give that rent to any one, and attorn my tenant to pay that rent to my feoffee with his own hand. *Bract.* fol. 160.

*Reditus* is another form of this word, which occurs in the Register. *De reditu unius libræ zinziberis*; of a rent of one pound of ginger. *Reg. Orig.* 2. This is the form adopted by Sir W. Blackstone, who makes the radical sense of the word to be, *return*, (from *redire*, to return.) 3 *Bl. Com.* 231. *Id.* 42. And Lord Coke, even while adopting the orthography *redditus*, and the etymology, *reddere*, gives to both the same sense of *going back*. *Reddere est quasi retro dare, et redditus dicitur a reddendo, quia retro it, sc.* to the lessor. 10 Co. 128 a, *William Clun's case*. But this is giving to *reddere* its civil law sense.

That *redditus* is the proper form of this word, seems apparent from the passage above quoted from Bracton, in which the derivation from *reddere* is very clearly pointed out by the mere collocation of the words.

REDDITUS SICCUS. L. Lat. In old English law. Rent seck; dry or barren rent. 2 *Bl. Com.* 42. *Redditus cæcus et siccus*. 6 Co. 58 a.

REDDOUR. L. Fr. A rendering. *Kelham*.

REDEMPTIO. L. Lat. In old English law. A ransom, or fine. *Stat. Marlbr.* c. 1. Spelman calls it the heaviest kind of fine, (*mulcta gravissima*;) and makes it to be the same with the Saxon *were* or *were-gild*.

A ransom. A sum paid as a condition

of liberation from confinement. *Fleta*, lib. 1, c. 42, § 2.

**REDEUNDO.** Lat. Returning; in returning; while returning. 3 *East*, 89. 2 *Str.* 985.

**REDEVANCE.** Fr. In old French and Canadian law. Dues payable by a tenant to his lord, but not necessarily in money. *Dunkin's Address*, 19.

**REDHIBERE.** Lat. In the civil law. To have again; to have back; to cause a seller to have again what he had before, (*facere ut rursus habeat venditor quod habuerit.*) *Dig.* 21. 1. 21, pr.

**REDHIBITIO.** Lat. [from *redhibere*, q. v.] In the civil law. A returning, (*redditio.*) *Dig.* 21. 1. 21, pr. The returning of a thing purchased to the seller. *Id.* See *Redhibition*. Some copies, in place of *redditio* in this passage, have *rehabito*, a re-having.

**REDHIBITION.** [Lat. *redhibitio*, from *redhibere*, to have back.] In the civil law. The returning of a thing purchased to the seller, on the ground of some defect or fraud; \* the annulling or undoing of a sale, (*venditionis resolutio.*) *Calv. Lex.* The avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice. *Civil Law of Louis.* art. 2496.

**REDHIBITORY ACTION.** In the civil law. An action by the buyer of a thing against the seller, to compel the latter to take it back and return the price. *Pothier, Contr. of Sale*, num. 203. *Civ. Code of Louis.* art. 2512.

**REDHIBITORY DEFECT (or VICE.)** In the civil law. A defect in an article sold, for which the seller may be compelled to take it back; a defect against which the seller is bound to warrant. *Pothier, Contr. of Sale*, num. 203.

**REDIMERE.** Lat. In old English law. To ransom; to punish by a fine; to compel to pay a fine or ransom. *Stat. Westm.* 2, c. 36. *Cart. de Forest.* c. 10.

**RE-DISSEISIN.** [L. Lat. *re-disseisina.*] In old English law. A second disseisin of a person of the same tenements, and by the same disseisor, by whom he was before disseised. 3 *Bl. Com.* 188. *Fleta*, lib. 4, c. 29. Called, in the statute of Marlbridge, (c. 8,) a repeated disseisin, (*iterata disseisina.*)

A writ which lay in such case, (*breve de redisseisina.*) *Reg. Orig.* 206 b.

**REDITUS.** Lat. [from *redire*, to return.] In the civil law. A return; the fruit, profit or income of a thing. *Calv. Lex.* It is observed that it might also be written *redditus*, and derived from *reddere*, to yield. *Id. ibid.* See *Redditus*.

In the common law. A rent; rents. Blackstone translates it a compensation or return, (which justifies the derivation from *redire*, to return,) but he translates it also a render, (which requires the derivation from *reddere*, to render.) 2 *Bl. Com.* 41. This form of the word is apparently taken from the civil law. See *supra*. For reasons why the form *redditus* is preferred, see *Redditus*.

*Reditus albi.* White rents, or blanch farms. 2 *Bl. Com.* 42. See *Blanch ferme*.

*Reditus capitales.* Chief rents. *Id. ibid.* See *Chief rents*.

*Reditus nigri.* Black rents or black mail. *Id. ibid.* See *Black rents*.

*Reditus quieti.* Quit rents. *Id. ibid.* See *Quit rents*.

*Reditus siccus.* Rent seek. *Id. ibid.* See *Rent seek*.

**REDOBATOIRES.** L. Lat. In old English law. Redubbers. Persons who changed stolen clothes into a new form, making out of a mantle a coat or overcoat, (*de mantello tunicam vel supertunicam facientibus.*) *Stat. Wallia*, 12 Edw. I. *Barr. Obs. Stat.* 124.

**REDUBBOURS.** L. Fr. [L. Lat. *redobatores*, q. v.] In old English law. Persons who knowingly bought stolen clothes, and changed them into another form; (*achatauntz ascient dras embles, et les attirent en auter forme.*) *Britt.* c. 29. *Cowell*.

**REDUCE.** In Scotch law. To rescind or annul; to declare void judicially. See *Reduction*.

**REDUCTION.** In Scotch law. An action brought for the purpose of rescinding, annulling or cancelling some deed, bond, contract or other instrument in writing. 1 *Forbes' Inst.* part 4, p. 158, 159. See *Bell's Dict.*

**RE-ENTRY.** The resuming or retaking a possession that one has lately foregone. *Cowell*. Particularly applied to land. The entry by a lessor upon the premises leased, on failure of the tenant to pay the rent or perform the covenants in the lease; such re-entry being made pursuant to a proviso contained in the lease.

REEVE, *Reve*. [from Sax. *gerefa*, q. v.] In old English law. A ministerial officer appointed to execute process. *Crabb's Hist.* 25. The *shire-reeve* answered to the modern *sheriff*. *Id.* 1 *Bl. Com.* 116. An officer appointed to collect taxes or public dues. *Spelman*, voc. *Grafio*.

A chief officer or governor; a superintendent, (*præfectus*, *præpositus*.) A disposer or director. *Co. Litt.* 61 b. See *Reve*.

An officer of a court leet. 1 *Crabb's Real Prop.* 502, § 647.

RE-EXCHANGE. [Fr. *rechange*; L. Lat. *recambium*.] In commercial law. The amount which the holder of a bill of exchange which has been protested for non-payment, is entitled to receive from the drawer or indorser, to indemnify him for its non-payment, together with his necessary expenses and interest.\* The amount for which a bill of exchange drawn upon the drawer or indorser of an unpaid bill can be purchased by the holder, in the country where the acceptance is made, to indemnify him for its non-payment.\* *Story on Bills*, § 400.

Properly, the current rate of exchange payable on a bill so re-drawn. See 3 *Kent's Com.* 115, 116. According to Heineccius, it includes all the damage or expenses to which the holder is entitled, (*damnum illud omne repetitur sub nomine recambii*.) *Heinecc. de Camb.* c. 4, § 45.

RE-EXTENT. In English practice. A second extent made upon lands or tenements, upon complaint made that the former extent was partially performed. *Cowell*.

REFECTIO. Lat. [from *reficere*, q. v.] In civil and old English law. Repair; reparation; restoration; as of a way, &c. *Dig.* 43. 19. 3. 16. *Fleta*, lib. 4, c. 27, § 1.

REFEREE. In practice. A person to whom a cause pending in a court is referred by the court, to take testimony, hear the parties and report thereon to the court, and upon whose report, if confirmed, judgment is entered.

REFERENCE. In practice. The act of a court in referring a cause or matter pending before it to one or more referees, to examine, take testimony and report to the court.

REFERENDARIUS. L. Lat. In civil and mediæval law. An officer through whom petitions to the emperor were presented, or to whom they were referred.

*Nov.* 10, 113, 124. *Cod.* 1. 50. 2. *Calv. Lex. Brissonius*. Supposed to correspond with the officer called "master of requests."

REFERENDARY. [L. Lat. *referendarius*.] In Saxon law. A master of requests; an officer to whom petitions to the king were referred. *Spelman*, voc. *Referendarius*.

REFERENDO SINGULA SINGULIS. Lat. Referring individual or separate words to separate subjects; making a distributive reference of words in an instrument; construing distributively. Lord Ellenborough, 11 *East*, 322. 2 *Powell on Devises*, (by Jarman,) 112. See *Reddendo singula singulis*.

REFERRE. Lat. In old English law. To refer. *Referantur ad justiciarios n'ros de banco, et ibi terminentur*; they shall be referred to our justices of the bench, and shall there be determined. *Mag. Cart.* 9 Hen. III. c. 12.

REFFARE. L. Lat. [from Sax. *ræfare*, to spoil.] In old European law. To rob, or rifle; to plunder. *L. Salic.* tit. 29, § 6. *Spelman*. *LL. Hen.* I. c. 83. *Cowell*. See *Reif*.

REFICERE. Lat. In the civil law. To repair; to restore; to reduce a way or road to the original form or state, (*ad pristinam formam reducere*.) *Dig.* 43. 19. 3. 15. To restore a thing (as a trench or water-course) to its former state, (*in pristinum statum restaurare*.) *Id.* 43. 21. 6. Bracton adopts the word and its definition, (*in pristinum statum reformare*.) *Bract.* fol. 233. See *Fleta*, lib. 4, c. 27, § 11.

REFOIL, *Refoule*. L. Fr. [L. Lat. *refullum*.] A flowing out, or back. *Refoil de la mere*; ebbing of the sea. *Kelham*.

REFORM. Literally, to form again; to correct or amend; to treat as corrected or amended. In equity jurisprudence,—to treat an instrument in which an error of fact has been committed, as though such error did not exist; to construe it according to the original intent of the parties.\* Equity will reform a contract where there is a mistake of facts. 1 *Story's Eq. Jur.* §§ 152, 166.

REFULLUM. L. Lat. In old English law. A flowing back. *Fleta*, lib. 4, c. 27, § 4.

REFUTANTIA. L. Lat. In old records. An acquittance or acknowledgment of renouncing all future claim. *Cowell*.

REG. GEN. An abbreviation of *Regula Generalis*. 6 *East*, 1.

REGALE. L. Lat. In old French law. A payment made to the seigneur of a fief, on the election of every bishop or other ecclesiastical feudatory, corresponding with the relief paid by a lay feudatory. *Steph. Lect.* 235.

REGALIA. Lat. [*regalis*, royal, from *rex*, king.] In English law. Royal rights or prerogatives. 1 *Bl. Com.* 241. The word is used in feudal law. *Feud. Lib.* 2, tit. 56.

REGARD. L. Fr. Reference; relation. *Kelham*.

Respect. *Id.*

Reward; fee; a perquisite or allowance. *Id.*

REGARD. [L. Lat. *regardum*, *rewardum*, from L. Fr. *regarder*, to look to, or look at.] In forest law. Inspection or supervision of a forest. *Manwood. Cowell.* See *Regardum*.

REGARDANT. L. Fr. and Eng. In old English law. A term applied to a villein who was annexed to the land. 2 *Bl. Com.* 93. So called because he had the charge to do all base or villeinous services within the manor. *Co. Litt.* 120 a, b.

REGARDATOR. L. Lat. In old forest law. A regarider, (q. v.) *Regardatores nostri eant per forestas ad faciendum regardum*; our regariders shall go through the forests to make regard. *Cart. de For.* 9 Hen. III. c. 5.

REGARDEUR. [L. Lat. *regardator*, from L. Fr. *regardeur*, an inspector.] In forest law. An officer of the forest, appointed to supervise all other officers. *Crompt. Jurisd.* 153. *Manwood. Cowell.*

REGARDUM. L. Lat. In old forest law. Regard; inspection of a forest. *Cart. de For.* 9 Hen. III. c. 5. *Fleta*, lib. 2, c. 41, §§ 1, 5.

REGIA VIA. Lat. [L. Fr. *real chemin*.] In old English law. The royal way; the king's highway. *Co. Litt.* 56 a.

REGIAM MAJESTATEM. Lat. The most ancient treatise extant on the law of Scotland, commonly supposed to have been compiled by order of David I. but shown by Lord Kames not to be older than the reign of David II. *Home's Brit. Ant. Essay* 1. It consists of four books, and derives its title from the two words with which it commences, like the *Regiam po-testatem* of Glanville, and from this and

numerous other points of resemblance, it is now generally admitted, even by Scotch writers, to have been copied from Glanville's treatise. Dr. Robertson observes that "it seems to be an imitation, and a servile one, of Glanville." 1 *Robertson's Charles V. Appendix*, Note xxv. 1 *Reeves' Hist. Eng. Law*, 225, 226. *Crabb's Hist.* 70, 71. 1 *Steph. Com.* 83, note (l.) Sir Matthew Hale, in his History of the Common Law, (c. x.) goes into a comparison of the two works. The *Regiam Majestatem* is still quoted in the Scotch courts. See 3 *Bell's Appeal Cases*, 131, 132. 2 *Swinton's R.* 409. Skene's Glossary *De Verborum Significatione* is principally intended as an interpreter of this work.

REGIDOR. Span. In Spanish-American law. A member of a municipal or town council, (*ayuntamiento*.) 12 *Peters' R.* 442, note. The body of *regidores* constituted what was called the *regimiento*. *Id. ibid.*

REGIMIENTO. Span. In Spanish American law. The body of *regidores*, composing a part of the *ayuntamiento*, or municipal council of a town. 12 *Peters' R.* 442, note.

REGISTER. An officer authorized to keep a public record, or charged with the custody of records. In the city of New-York, the register of deeds is an officer whose duty it is to receive and record deeds, mortgages, and other instruments, and to preserve such records. In Pennsylvania, a register is an officer charged with probate of wills. *Purdon's Dig.* 187, *et seq.*

REGISTER. L. Fr. and Eng. [L. Lat. *registrum*; from O. Fr. *gister*, to lay, or put in a place.] A repository; a place where a thing is laid up, (*locus quo quid reponitur*.) *Spelman*.

A book in which things are entered or registered for their preservation.\* *Cowell*.

REGISTER, or REGISTER OF WRITS. [L. Lat. *Registrum Brevium*.] A celebrated collection, in Latin, of writs, original and judicial, generally called, by way of eminence, "The Register," and one of the most ancient books of the common law. *Co. Litt.* 73 b, 159 a. Lord Coke, indeed, has pronounced it to be the oldest book in the law, and considers it as a component part of what he calls "the very body, and, as it were, the very text of the common law of England." 4 *Inst.* 140. 8 *Co. pref.* Sir William Blackstone speaks of it as

"that most ancient and highly venerable collection of legal forms, the *registrum omnium brevium*, or register of such writs as are suable out of the king's courts." 3 *Bl. Com.* 183. It is otherwise called *Registrum Cancellariæ*, (The Register of Chancery,) and is supposed to have been compiled by Ranulph de Hengham, chief justice of the King's Bench in the reign of Edward I. *Crabb's Hist.* 199. It contains upwards of a thousand writs, adapted to every variety of case or injury, generally expressed with great brevity of language, and so perfect in construction as to receive from Blackstone the eulogy that "every man who is injured will be sure to find a method of relief exactly adapted to his own case, described in the compass of a few lines, and yet without the omission of any material circumstance." 3 *Bl. Com. ub. sup.* In confirmation of this remark, it may be observed that the writs of trespass (*de transgressionem*) alone comprise upwards of two hundred and fifty forms. It has, however, been said by Lord Holt, that "half the writs used in Westminster Hall are not in the Register." 12 *Mod.* 645. And Lord Ellenborough observed, that "there are a multitude of writs in daily use and of unqualified legal validity and effect, which are not inserted in that collection." 9 *East*, 473.

The authority of the Register has always been of the very highest kind, and under the old system of remedy *by writ*, it was constantly referred to and regarded as the standard of form, absolutely decisive where any question of form was raised. *Plowd.* 125, 228. See 1 *Leon*, 169. It is called in Plowden, "our *Calapine*, that is, the Register," probably with reference to the author (Calepine) of a standard dictionary of the time. *Id.* 125. It is now rarely referred to, but is still valuable as a principal foundation of the remedial law of England and the United States. The purity of its Latin is particularly commended by Lord Bacon. *Bac. Read. Uses*.

REGISTER. In commercial law. A name frequently given to the certificate of registry of a vessel. 3 *Kent's Com.* 146, and note. *Id.* 150. *Jacobsen's Sea Laws*, 55. Properly, however, the *register* is the original entry made at the custom house, stating the time and place where the vessel was built, and the other particulars required by law, and of which the certificate of registry is an abstract. *Act of Congress*,

31st Dec. 1792, sect. 3, 4, 9. 3 *Kent's Com.* 142, 143.

REGISTRAR. An officer whose business is to write and keep a register.

In English law. An officer whose business is to keep a register of births, marriages and deaths, under the civil system of registration lately established. 3 *Steph. Com.* 349, 350.

REGISTRY. In commercial law. The registration of a vessel at the custom house, for the purpose of entitling her to the full privileges of a British or American built vessel. 3 *Kent's Com.* 139. *Abbott on Shipping*, 58—96.

In conveyancing. The entering on record of deeds, mortgages and other conveyances and instruments, in public offices appointed for the purpose, in order to give them validity as against *bona fide* purchasers and mortgagees. 4 *Kent's Com.* 456—459. This practice may be traced as far back as the time of Fleta. *Fleta*, lib. 3, c. 14, § 13.

REGLAMENTO. Span. In Spanish colonial law. A written instruction given by a competent authority, without the observance of any peculiar form. *Schmidt's Civ. Law*, Intro. 93, note.

REGRATER, *Regrator*. [L. Lat. *regratarius*, from Fr. *regrateur*, a retailer or huckster.] In old English and Scotch law. A person who bought up corn [grain] or other dead victual [provisions] in any market, and sold it again in the same market, or within four miles of the place. 4 *Bl. Com.* 158. 4 *Steph. Com.* 291, note (m.) 2 *Show.* 52. *Skene de Verb. Sign.*

The more ancient sense of the word, according to Spelman, was that of *retailer*, (*propola*.)

REGRATING. In old English law. The offence of buying grain or provisions in any market, and selling it again in the same market, or within four miles of the place.\* 4 *Bl. Com.* 158. See *Bell's Dict.*

REGRESS. [Lat. *regressus*, from *regredi*, to go back.] A going back. *Dyer*, 31 b. *Ingress*, *egress* and *regress*, comprise the rights of going or entering upon land, going off it, and going back upon it.

REGRESSUS. Lat. [from *regredi*, to go back.] A going back; recourse; a going back to a party for the purpose of obtaining indemnity. *Sine regressu habendo versus suum feoffatorem*; without having recourse against his feoffor. *Bract.* fol. 179 b. *Fleta*, lib. 2, c. 64, § 17.

**REGULA.** Lat. In the civil law. A rule. *Regula est quæ rem quæ est, breviter enarrat*; that is a rule which briefly sets forth the subject matter of it. *Dig.* 50. 17. 1. See *Fleta*, lib. 2, c. 13, § 2. The seventeenth and last title of the fiftieth book of the Digests is entitled *De Diversis Regulis Juris Antiqui*, (Of divers rules of the ancient law.)

**REGULA.** Lat. In practice. A rule; a rule of court.

*Regula generalis*; a general rule. A standing rule or order of a court. Frequently abbreviated, *Reg. Gen.*

**REGULA CATONIANA.** Lat. In the Roman law. The rule of Cato. A rule respecting the validity of dispositions by will. See *Dig.* 34. 7.

**REGULAR CLERGY.** In old English law. Monks who lived *secundum regulas* (according to the rules) of their respective houses or societies were so denominated, in contradistinction to the parochial clergy who performed their ministry in the world, *in seculo*, and who from thence were called *secular* clergy. 1 *Chitt. Bl. Com.* 387, note.

**REGULARITER.** L. Lat. In old English law. Regularly; strictly; according to rule; as a general rule. *Bract.* fol. 87 b. *Regulariter non valet pactum de re mea non alienanda*; regularly an agreement not to alien my property is not valid. *Co. Litt.* 223.

**REGULUS.** Lat. In Saxon law. A title sometimes given to the earl or comes, in old charters. *Spelman.*

**REHABERE FACIAS SEISINAM.** L. Lat. (You cause to re-have seisin.) In old practice. A writ which lay where a sheriff had delivered seisin of a greater part than he ought, commanding him to re-deliver seisin of the excess.\* *Reg. Jud.* 12, 51, 54.

**REHABILITATE.** [L. Lat. *rehabilitare*, from *re*, again, and *habilitare*, to enable, from *habilis*, able.] In Scotch and French criminal law. To restore to a former capacity or ability.\* To re-instate a criminal in his personal rights which he has lost by a judicial sentence. *Brande.* In Scotland, a pardon from the king is said to *re-habilitate* a witness laboring under *infamia juris.* *Id.*

**REHABILITATION.** [L. Lat. *rehabilitatio*, from *rehabilitare*, to re-enable.] In French and Scotch criminal law. The re-instatement of a criminal in his personal

rights which he has lost by a judicial sentence. *Brande.*

In old English law. A papal bull or brief for re-enabling a spiritual person to exercise his function, who was formerly disabled; or a *restoring* to a former ability. *Cowell.*

**RE-HEARING.** In equity practice. A second hearing of a cause, for which a party who is dissatisfied with the decree entered on the former hearing may apply by petition. 3 *Bl. Com.* 453. 4 *Steph. Com.* 31. 3 *Daniell's Chanc. Pr.* 1602.

**REHERCER.** L. Fr. To rehearse; to state or recite. *Britt.* c. 52.

**REI.** Lat. [plur. of *reus*, q. v.] In the civil law. In a special sense. Persons from whom a thing is demanded, (*ii unde petitur.*) *Heinec. Elem. Jur. Civ.* lib. 3, tit. 17, § 841. Defendants. See *Reus*, *Favorabiliores rei*, &c.

In a general sense. Parties to an action; litigating parties, (*ii quorum de re disceptatur*) including both the actor and the *reus* proper. *Id. ibid.*

Parties to a contract. *Id. ibid.*

**REI.** Lat. [gen. of *res*, q. v.] Of a thing. See *Res.*

*Rei turpis nullum mandatum est.* The mandate of an immoral thing is void. *Dig.* 17. 1. 6. 3. A contract of mandate requiring an illegal or immoral act to be done, has no legal obligation. *Story on Bailm.* § 158.

**REI INTERVENTUS.** Lat. In Scotch law. A part performance of a contract. 2 *Bell's Appeal Cases*, 115.

**REIF.** Sc. [from Sax. *reaf*.] In old Scotch law. Robbery. *Skene ad Leg. Alexandri R.* c. 2, par. 2. *Cowell.*

**RE-INSURANCE.** See *Re-assurance.*

**REISA.** L. Lat. [from Sax. *rase*, a rush.] In old European law. A sudden military expedition; a sally, (*procursus militaris.*) *Spelman.*

**REJOIN.** [L. Lat. *rejungere.*] In pleading. To answer a plaintiff's replication in an action at law, by some matter of fact. See *Rejoinder.*

**REJOINING GRATIS.** In English practice. Rejoining voluntarily, or without being required to do so by a rule to rejoin. 10 *Mees. & W.* 12.

**REJOINDER.** L. Fr. and Eng. [L. Lat. *rejunctio.*] In pleading. A defendant's answer of fact to a plaintiff's replication. *Steph. Pl.* 58, 59. *Co. Litt.* 303 b. 3 *Bl. Com.* 310. Corresponding to the *du-*

*plicatio* of the civil law, and the *triplicatio* of Bracton. *Inst.* 4. 14. 1. *Bract.* fol. 400 b.

The term *rejunctio*, of which *rejoinder* is a mere translation, seems to have been invented by the modern civilians. Spiegelius, who is cited by Cowell, defines it to be "an allegation which is allowed a defendant, to invalidate the plaintiff's replication, and strengthen his own exception (or plea.\*)" Rejoinders were formerly common in chancery pleading, but have long been disused. *West's Symboleog.* part 2, tit. Chancery, sect. 113, p. 232 b.

RELATIO. Lat. [from *referre*, to carry back.] In old English law. Relation; reference; a carrying back. See *Relation*. *Relatio est fictio juris, et intenta ad unum*. Relation is a fiction of law, and intended for, or directed to one thing. 3 Co. 28 b, *Butler and Baker's case*. That is, it will not be applied to a collateral matter. *Id. ibid.*

Relatio semper fiat ut valeat dispositio. Reference [of a disposition made by will] should always be made, so that the disposition may have effect. 6 Co. 76 b, *Sir George Curson's case*.

RELATION. [L. Lat. *relatio*, from *referre*, to carry back.] The carrying back of an act or proceeding to some past or previous time or date, and giving it operation or validity from such time.\* Thus letters of administration in certain cases take effect by *relation*, from the death of the intestate. 1 *Williams on Exec.* 528. So, a deed delivered as an escrow, and subsequently delivered as a deed, will sometimes be allowed to *relate back* to the first delivery, so as to give it effect from that time. 4 *Kent's Com.* 454. So, at common law, a judgment had effect by relation, from the first day of the term of which it was entered. 3 *Bl. Com.* 420. 1 *Arch. Pr.* 227. So, in England, the transfer of a bankrupt's property to the assignees, operates, by a retrospective relation, from the period when the trader became bankrupt. 2 *Steph. Com.* 206, 207.

Relation, as Lord Coke observes, is a fiction of law; the act or proceeding related being *supposed to have taken place* at the previous time or date. "The doctrine of *relation back* to a former period is a fiction which is often indulged in advancement of justice, to sustain legal proceedings; but it is never resorted to when the result would be to deprive a party of a clear legal right, or when it would work

manifest injustice." Chilton, J. 21 *Alabama R.* 169, 175.

"RELATIONS," in a will, means persons entitled according to the statute of distributions. 4 *Kent's Com.* 537, note. It has long been settled, that a bequest to *relations* applies to the person or persons who would, by virtue of those statutes, take the personal estate under an intestacy, either as next of kin, or by representation of next of kin. 2 *Jarman on Wills*, 45, (33, Perkins' ed. 1849.)

RELATIVE FACT. In the law of evidence. A fact having relation to another fact; a minor fact; a circumstance. *Burr. Circ. Evid.* 121, note (d.)

RELATIVE RIGHTS. Those rights of persons which are incident to them as members of society, and standing in various relations to each other. 1 *Bl. Com.* 123.—Those rights of persons in private life which arise from the civil and domestic relations. 2 *Kent's Com.* 1.

RELATOR. In practice. An informer; a person in whose behalf certain writs are issued, such as attachments for contempt, writs of *mandamus* and informations in the nature of a *quo warranto*, &c. 3 *Bl. Com.* 264. See *Id.* 427. These are said to be prosecuted *on the relation* (*ex relatione*) of the person at whose instance they are issued. See *Ex relatione*.

RELATRIX. L. Lat. and Eng. In practice. A female relator, or petitioner. 14 *Peters' R.* 500, 517.

RELAXARE. L. Lat. In old conveyancing. To release. *Relaxavi, relaxasse*; have released. *Litt.* sect. 445. In *Lampet's case*, (10 Co. 52 b) reference was made to a case in 4 Edw. VI. where it was said that *laxare* is properly to set prisoners in fetters at liberty, and *relaxare* is to do it quickly; and *metaphoricè*, *relaxare* is to set at liberty fettered estates and interests, and to make them free and absolute.

RELAXATIO. L. Lat. [from *relaxare*, q. v.] In old conveyancing. A release; an instrument by which a person relinquishes to another his right in any thing. *Yearb.* P. 18 Hen. VI. 9. *Spelman.* A deed of release. See *Release*.

RELAXATION. In old Scotch practice. Letters passing the signet (q. v.) by which a debtor was relaxed [released] from the horn, that is, from personal diligence. *Bell's Dict.* See *Horning*.

RELEASE. [L. Fr. *reles*, *relesse*, *release*,

*relais*; L. Lat. *relaxatio*.] In conveyancing. A relinquishment or renunciation of some right or claim by one person, in favor of another.\*—The giving or discharging of the right or action which a man hath, or may have or claim against another man, or that which is his. *Shep. Touch.* 320.

In a stricter sense—the conveyance of a man's interest or right which he hath unto a thing, to another that hath the possession thereof, or some estate therein. *Id. ibid.*—A discharge or a conveyance of a man's right in lands or tenements to another that hath some former estate in possession. 2 *Bl. Com.* 324.—The relinquishment of a right or interest in lands or tenements, to another who has an estate in possession in the same lands or tenements. *Watkins on Conv.* 213.—A conveyance of an ulterior interest in lands or tenements to a particular tenant, or of an undivided share to a co-tenant, (the releasee being in either case in privity of estate with the releasor,) or of the right, to a person wrongfully in possession. 1 *Steph. Com.* 479. The various kinds of release recognised in England are enumerated *infra*.

In the United States, the technical principles relating to a release seem to be wholly, or in great measure, inapplicable. The conveyance corresponding with a release at common law is with us a *quitclaim* deed, (q. v.) 2 *Hilliard's Real Prop.* 302, [316.]

**RELEASE BY WAY OF ENLARGING AN ESTATE,** (or *enlarger l'estate*.) A conveyance of the ulterior interest in lands to the particular tenant. As if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 1 *Steph. Com.* 480. 2 *Bl. Com.* 324.

**RELEASE BY WAY OF PASSING AN ESTATE,** (or *mitter l'estate*.) As where one of two co-parceners releases all her right to the other, this passes the fee simple of the whole. 2 *Bl. Com.* 324, 325.

**RELEASE BY WAY OF PASSING A RIGHT,** (or *mitter le droit*.) As if a man be disseised and releaseth to his disseisor all his right, hereby the disseisor acquires a new right, which changes the quality of his estate, and renders that law-

ful which before was tortious or wrongful. 2 *Bl. Com.* 325.

**RELEASE BY WAY OF EXTINGUISHMENT.** As if my tenant for life makes a lease to A. for life, remainder to B. and his heirs, and I release to A. this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder, as well as of A.'s particular estate. 2 *Bl. Com.* 325.

**RELEASE BY WAY OF ENTRY AND FEOFFMENT.** As if there be two joint disseisors, and the disseisee releases to one of them, he shall be sole seised, and shall keep out his former companion; which is the same in effect as if the disseisee had entered and thereby put an end to the disseisin, and afterwards had enfeoffed one of the disseisors in fee. 2 *Bl. Com.* 325.

**RELEASE.** An instrument whereby a party, having a right of action as creditor or otherwise, formally remits the same, and thus estops himself from again setting up his claim. *Pulling on Merc. Accounts*, 18. Having this operation, a release should always be in the form of a deed under seal, and contain a plain and distinct remission of the claim to which it relates. *Id. ibid.*

A release under seal, although reciting only a nominal consideration, extinguishes the debt to which it relates. 5 *Duer's* (N. Y.) *R.* 294. There is a wide distinction between a *release* and a *receipt*. The first, by its own operation, extinguishes a pre-existing right, and therefore cannot be contradicted or explained by parol; the second has never the effect of destroying a subsisting right, but is merely evidence of a fact—the fact of payment, and, therefore, like all other facts given in evidence, may be refuted or explained. *Oakley, C. J. Id. ibid.* citing 16 *Wendell's R.* 474. See *All, Demand*.

**RELEFE, Relief.** L. Fr. [from *relever*, q. v.] Relief; an incident of feudal tenure. *Britt.* c. 69.

**RELEGATIO.** Lat. [from *relegare*, to send away, to banish.] In the civil law. Banishment without the loss of civil rights. *Calv. Lex. Inst.* 1. 12. 2. *Dig.* 48. 22. It was, by this circumstance, chiefly distinguished from *deportatio*, (q. v.) Some have supposed a further distinction to be, that *deportatio* was for life, and *relegatio* for years. But this was not always the case. *Calv. Lex.*

**RELEGATION.** [from Lat. *relegatio*, q. v.] In old English law. Banishment for a time only. *Co. Litt.* 133.

**RELEVAMEN.** L. Lat. [from *relevare*, to lift up.] In old English law. Relief; one of the incidents of the feudal tenure. *Lib. Rames.* sect. 310. *Spelman.* In Domesday, it is called *relevamentum*; in the laws of Edward the Confessor, *relevatio*; in Magna Charta, and generally in old English and Scotch law, *relevium*. *Domesd. titt. Berescire, Walingford.* LL. *Edu. Conf.* c. 35. See *Relevium*.

**RELEVANCY.** In practice. The quality of being relevant or applicable. A term applied to evidence.

**RELEVANT.** In the law of evidence. Having relation; applicable. *Relevant* evidence is evidence applicable to the issue.

**RELEVER.** L. Fr. To relieve; to pay a relief, (*relefe*.) *Britt.* c. 69.

**RELEVUM.** L. Lat. [from L. Fr. *relever*, to raise or lift again.] In old English and Scotch law. Relief; one of the incidents of the feudal tenure. *Glanv.* lib. 9, c. 4. *Bract.* fol. 84. *Magna Charta*, c. 3. *Spelman*, voc. *Relevamen*. LL. *Malcolm.* II. c. 1. *Hæreditas quæ jacens fuerit per eorum decessum relevetur in manus hæc, et propter talem relevationem facienda erit ab hæc quædam præstatio quæ dicitur relevium*; the inheritance which was fallen in by their decease, shall be taken up into the hands of the heir, and for such taking up, a payment shall be made by the heir, which is called a relief. *Fleta*, lib. 3, c. 17, § 1.

**RELICTA.** Lat. (Being relinquished.) In practice. The confession of the plaintiff's action by a defendant, after plea pleaded. A species of *cognovit*, (q. v.) so called from the emphatic words of the old Latin form, the defendant *relinquishing* or *withdrawing his plea*, (*relicta verificatione*.) 1 *Tidd's Pr.* 559.

**RELICTIO.** [Lat. *relictio*, from *relinquere*, to leave.] A leaving; a leaving dry. Recess of the sea, by which land formerly covered with water is left dry. *Hale de Jur. Maris*, pars 1, c. 4. *Schultes on Aquatic Rights*, 121, 127. *Angell on Water-Courses*, § 57. *Angell on Tide-Waters*, 264.

**RELIEF.** [from L. Fr. *relefe*, *relief*, from *relever*, to lift or raise again; L. Lat. *relevium*, *relevatio*, *relevamen*, *relevamentum*, *introitus*.] In old English and Scotch law. A sum of money paid by the heir of a

deceased tenant, by way of fine or composition with the lord for *taking up* (or, in the ancient sense of the word, *relieving*, *propter relevationem*) the estate, which was lapsed or fallen in, (*quæ jacens fuit*), by the death of the last tenant.\* 2 *Bl. Com.* 65. *Bract.* fol. 84. *Fleta*, lib. 3, c. 17. *Co. Litt.* 76 a. *Wright on Ten.* 97. A principal and very oppressive incident of the feudal tenure. The idea of a *fallen* estate is clearly derived from the *hæreditas jacens* of the civil law; and a payment in the nature of a relief seems to have been known to that law, under the name of *introitus*. *Fleta*, lib. 3, c. 17, § 1. *Calv. Lex.*

Britton uses the verb *relever*. *Volons nous myc que ascun tenaunt soit tenu à relever sa terre plus de une foits en sa vie*; we will not that any tenant be bound to relieve his land more than once in his life. *Britt.* c. 69. But the corresponding English word *relieve* seems never to have been adopted.

**RELIGIOUS MEN.** [Lat. *religiosi*.] In old English law. Such as entered into a monastery or convent, there to live devoutly. *Cowell*. Clauses were frequently inserted in ancient deeds of sale of land, restraining the vendee from giving or alienating it to religious persons or Jews, to the end that the land might not fall into mortmain. *Id.*

**RELIQUA.** Lat. In the civil law. The balance or arrears of an account. *Spelman*. Money left unpaid.

**RELIQUARE.** L. Lat. [from *reliqua*, q. v.] In old exchequer practice. To owe a balance of account. *Skene de Verb. Sign.* voc. *Scaccarium*.

**RELIQUI.** Lat. In the civil law. The rest. Held to signify "all," (*universos, omnes*.) *Dig.* 50. 16. 95, 160.

**RELIVERER.** L. Fr. To re-deliver. *Kelham*.

**RELOCATIO.** Lat. [from *re*, again, and *locatio*, a letting.] In the civil law. A re-letting. *Hoinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 926.

*Relocatio tacita*; a tacit or implied re-letting, as in case of holding over after expiration of the term. *Id.* Closely translated in Scotch law, *tacit relocation*. *Bell's Dict.*

**REM domino vel non domino vendente duobus,**  
In jure est potior venditione prior.

Where one, whether owner or not owner, sells a thing to two persons, the party who

is first sold to, has the better right. A Latin couplet quoted in Fleta. Lib. 3, c. 15, § 8.

**REMAINDER.** [L. Lat. *remanentia*, *remanere*.] A residue of an estate in land, depending upon a particular estate, and created together with it. *Co. Litt.* 49 a. *Id.* 143 a.—An estate limited to take effect and be enjoyed after another estate is determined. As if a man seised in fee simple grant lands to A. for twenty years, and after the determination of the said term, then to B. and his heirs forever; here A. is tenant for years, *remainder* to B. in fee. 2 *Bl. Com.* 163, 164.—A remnant of an estate in land, depending upon a particular prior estate, created at the same time, and by the same instrument, and limited to arise immediately on the determination of that estate, and not in abridgment of it. 4 *Kent's Com.* 197.—An estate limited to commence in possession at a future day, on the determination by lapse of time or otherwise, of a precedent estate, created at the same time. 1 *N. Y. Rev. St.* [723,] 718, §§ 10, 11. See *Estate in remainder*.

**REMAINDER-MAN.** One who is entitled to a remainder.

**REMALLARE.** L. Lat. [from *re*, again, and *mallare*, to summon.] In old European law. To summon to court a second time; to re-summon. *Formul. Solen.* 124. *Spelman*.

**REMAND.** [L. Lat. *remandare*; L. Fr. *remanuer*.] To send back; to recommit. Where a party brought up on *habeas corpus* is sent back without obtaining the benefit of the writ, he is said to be *remanded*. 2 *Kent's Com.* 30.

**REMANENTIA.** L. Lat. [from *remanere*, q. v.] In old English law. A remainder. *Spelman*.

A perpetuity, or perpetual estate, (*pro perpetuo*.) *Glanv.* lib. 7, c. 1. *Bract.* fol. 244. *Reg. Maj.* lib. 2, c. 23.

**REMANERE.** Lat. In old English practice. To remain; to stop or stay; to *demur*, in the old sense of the word. *Primo queratur ad tenente si aliquid velit vel sciat dicere quare assisa debeat remanere*; it first should be inquired of the tenant if he will or know to say any thing why the assise should stay; [that is, why it should not proceed.] *Bract.* fol. 184 b. *Non propter minorem aetatem petentium remanebit assisa*; the assise shall not stay on account of the non-age of the demandants.

*Id.* fol. 276. Hence the term *remanet*, in modern practice.

**REMANERE.** L. Lat. In old English law. A remainder. *Co. Litt.* 49 a. 2 *Co.* 51 a, *Cholmley's case*.

**REMANET.** L. Lat. (It remains.) In English practice. The postponement of a trial. When a cause is postponed, it is said to be made a *remanet*. 2 *Tidd's Pr.* 758.

**REMAUNDER.** L. Fr. To send back; to remand. *Kelham*.

**REMEDIAL STATUTE.** A statute providing a remedy for an injury, as distinguished from a penal statute. A statute giving a party a mode of remedy for a wrong, where he had none, or a different one, before. 1 *Chitt. Bl. Com.* 86, 87, notes.

*Remedial* statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever. 1 *Bl. Com.* 86.

**REMEMBRANCERS.** In English law. Officers of the exchequer, whose principal duty is to put the judges of that court in remembrance of such things as are to be called on, and dealt in for the king's benefit. *Cowell. Stat.* 3 & 4 *Will.* IV. c. 99.

**REMENAUNT.** L. Fr. Remaining; to come after; remainder. *A remenaunt*; for ever after. *Kelham*.

**REMISE.** To remit or give up. A formal word in deeds of release and quitclaim. *Litt.* sect. 445. *Co. Litt.* 264 b.

"**REMISE, RELEASE AND QUITCLAIM,**" in a deed to one not in possession, when an intent to convey the estate of the grantors is recited, and a pecuniary consideration appears, are effectual as words of bargain and sale. 2 *Selden's R.* 422.

**REMISE, Remys.** L. Fr. Remised; released. *Kelham*.

**REMISI, REMISISSE.** L. Lat. In old conveyancing. Formal words in deeds of release. *Remisise, relaxasse et quietum clamasse*; have remised, released and quitclaimed. *Litt.* sect. 445.

**REMIT.** [Lat. *remittere*, q. v.] Literally, to send back. To send or transmit; as to *remit* money.

To give up; to relinquish; as to *remit* a fine.

**REMITTER.** [from Lat. *remittere*, to send back.] The sending back of a person to a title he had before.\* *Remitter* is where he who has the true property, or *jus proprietatis* in lands, but is out of possession thereof, and has no right to enter without recovering possession in an action, has afterwards the freehold cast upon him by some subsequent, and of course defective title; in this case he is *remitted*, or sent back by operation of law, to his ancient and more certain title. The right of entry which he has gained by a bad title, shall be *ipso facto* annexed to his own inherent good one; and his defeasible estate shall be utterly defeated and annulled by the instantaneous act of law, without his participation or consent. 3 *Bl. Com.* 19. See 2 *Hilliard's Real Prop.* 152, [156.]

Littleton calls *remitter* "an ancient term in the law," and defines it to be "where a man hath two titles to lands or tenements, viz: one, a more ancient title, and another, a more latter title, (*title plus darrein*;) and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthy title." *Litt.* sect. 659.

**REMITTERE.** Lat. [from *re*, again, and *mittere*, to send.] In old English practice. To send back; to give up or relinquish; to remise or release. *Postea jus suum remisit, et quietum clamavit*; afterwards remised and quit-claimed his right. *Bract.* fol. 313 b. See *Remise, Remisi.*

To remand on *habeas corpus*. 3 *How. St. Trials*, 161.

**REMITTITUR.** Lat. (Is sent back, or remitted.) In practice. A sending back (of a record.) See *infra*.

A relinquishment (of damages.) See *Remittitur damna*.

**REMITTITUR DAMNA.** Lat. In practice. An entry made on record, in cases where a jury has given greater damages than a plaintiff has declared for, remitting the excess. 2 *Tidd's Pr.* 896.

**REMITTITUR OF RECORD.** In practice. The sending back of a record or transcript from a superior to an inferior court, for the purpose of issuing execution. 2 *Tidd's Pr.* 1185. 2 *Burr. Pr.* 150.

**Remoto impedimento, emergit actio.** The impediment being removed, the action rises. When a bar to an action is removed, the action rises up into its original efficacy. *Shep. Touch.* (by Preston,) 150.

**REMOTUM.** Lat. Removed; remote. *Id quod est magis remotum non trahit ad se quod est magis junctum, sed e contrario in omni casu.* That which is more remote does not draw to itself that which is more near, but the reverse, in every case. *Co. Litt.* 164 a.

**REMOUNTER.** L. Fr. To go up again. *Et cel droit descent ascune foitz, ausi come chose pesaunte, et ascune foits remounte*; and this right descends sometimes, like a thing falling, and sometimes goes up again. *Britt.* c. 118.

**REMOVE.** "One removes when he changes his domicile. The word does not mean simply going out of or leaving a country." Pearson, J. 3 *Jones' Law R.* 93.

**REMUE.** L. Fr. [from Lat. *remotum*.] Removed. *Si le bref soit remue.* *Britt.* c. 46.

Remote, or distant. *Le prochein forclost l'remue, et l'remue, l'plus remue*; the nearer forecloses the remote, and the remote the more remote. *Id.* c. 119. *Ascuns remues, et ascuns plus remues.* *Id.* c. 118.

**REN, Rein, Rens.** L. Fr. Any thing; nothing. *Kelham*.

**RENABLE.** L. Fr. Reasonable. *De renable partie*; of reasonable part. *Britt.* c. 73. *Renables estovers.* *Yearb.* M. 8 Edw. III. 2.

**RENDER, Rendre.** L. Fr. To give or yield; to pay or perform; to return. Used also as a substantive, as in the phrase "to lie in render;" to consist in being rendered, paid or yielded. See *To lie in*.

To **RENDER.** [L. Lat. *reddere*.] In practice. To give up; to surrender. 1 *Arch. Pr.* 311.

**RENDERING.** [L. Lat. *reddendo*.] A term in conveyancing, expressive of the reservation of a rent. See *Doing*.

**RENEEZ.** In old records. A renegade; an apostate from Christianity to Mahometanism. *Hoveden in Ric.* I. sub. an. 1192. *Spelman*.

**RENOUNCE.** [from Lat. *renunciare*.] To give up a right.

To refuse to assume a duty. See *Renouncing probate*.

To disclaim or cast off an obligation, as to *renounce* one's allegiance.

**RENOUNCING PROBATE.** In English practice. Refusing to take upon one's self the office of executor or executrix. Refusing to take out probate under a will

wherein one has been appointed executor or executrix. *Holthouse*. 1 *Williams on Exec.* 230, 231.

**RENOVARE.** Lat. In old English law. To renew. *Annuatim renovare*; to renew annually. A phrase applied to profits which are taken and the product renewed again. *Ambl.* 131.

**RENT.** L. Fr. and Eng. [L. Fr. *rente*, from *rendre*, to render, yield, give or pay; L. Lat. *redditus*, *reditus*, qq. v.] A certain profit issuing yearly out of lands and tenements corporeal; a species of incorporeal hereditament. 2 *Bl. Com.* 41.—A compensation or return yielded periodically, to a certain amount, out of the profits of some corporeal hereditaments, by the tenant thereof. 2 *Steph. Com.* 33.—A certain yearly profit in money, provisions, chattels or labor, issuing out of lands and tenements, in retribution for the use. 3 *Kent's Com.* 460. See 2 *Penn. St.* (Barr's) *R.* 292, Kennedy, J.

*Rent*, or *rente*, (as it was formerly sometimes written,) is a purely French word, framed from *rendre*, on the analogy of the Lat. *redditus*, from *reddere*, and radically importing a thing rendered. See *Rente*.

**RENT CHARGE.** A rent reserved on a conveyance of land in fee simple, or granted out of lands by deed; so called because by a covenant or clause in the deed of conveyance, the land is *charged* with a distress for the payment of it.\* 2 *Co. Litt.* 143 b. 2 *Bl. Com.* 42. A rent with liberty to distrain. *Finch's Law*, b. ch. 7. Otherwise called a *fee-farm rent*. 2 *Bl. Com.* 43. 3 *Kent's Com.* 461. 1 *Hilliard's Real Prop.* 238, [231.]

**RENT SECK.** [L. Lat. *redditus siccus*.] Barren rent; a rent reserved by deed, but without any clause of distress. 2 *Bl. Com.* 42. 3 *Kent's Com.* 461. A rent without liberty to distrain. *Finch's Law*, b. 2, c. 8.

**RENT SERVICE.** In English law. Rent reserved out of land held by fealty or other corporeal service; and so called from such *service* being incident to it.\* 2 *Bl. Com.* 41, 42. 3 *Kent's Com.* 461. 1 *Hilliard's Real Prop.* 238, [231.]

**RENTE.** L. Fr. In old English law. Rent. *Si la dette soit issuaunte de ascun tenement come annule rente due*, &c.; if the debt be issuing out of any tenement, as an annual rent due, &c. *Britt.* c. 28. *Si pleynte soit fait de rente.* *Id.* c. 45. *Que ad done rente en fee, ou à terme de vie*;

who hath given a rent in fee, or for term of life. *Id. ibid.* *Rente de chambre*; a rent from the coffer; an annuity, (*redditus de camera*.) *Id.* c. 68. *Terre ou rente.* *Id.* c. 79. See *Id.* c. 81.

**RENTE.** L. Fr. Fined. *Stat. Westm.* 1, c. 13. *Et si ul le face, soit grevement rente*; and if any do so, he shall be grievously fined. *Id.* ● 16.

**RENTAL.** (Said to be corrupted from *rent-roll*.) In English law. A roll on which the rents of a manor are registered or set down, and by which the lord's bailiff collects the same. It contains the lands and tenements let to each tenant, the names of the tenants, and other particulars. *Cunningham. Holthouse.* 10 *East*, 206.

"RENTS," in a devise, will pass land itself. *Cro. Jac.* 104.

"RENTS AND PROFITS" will pass the estate itself. 1 *Meriv.* 213, 232, 233. 2 *Ves. & B.* 65. 8 *Howard's R.* 25, arg.

"RENTS, ISSUES AND PROFITS" more commonly signify in the books a chattel real interest in land; a kind of estate growing out of the land, for life or years, producing an annual or other rent. *Redfield, C. J.* 26 *Vermont R.* 741, 746.

**RE-OUSTER.** L. Fr. To oust again, or in return. *Yearb.* T. 10 Edw. III. 27.

**REPARATIONE FACIENDA,** *Breve De.* L. Lat. (Writ for making repair.) In old English practice. The name of a writ which lay to compel the repairing of a house, mill, bridge, &c. *F. N. B.* 127 A. *Reg. Orig.* 153 b.

**REPEAL.** The abrogation or annulling of a statute by a subsequent one.

To **REPEAL.** [L. Fr. *repealer*, *repeller*, *re-appeler*; to call back.] To annul a law or statute by a subsequent one; literally, to revoke or recall it. See *Repealer*, *Repeler*.

**REPEALER.** L. Fr. To repeal or revoke. *De repealer, et de ennoyter, et de amender*; to revoke, and to annul, and to amend. *Britt.* fol. 1.

**REPELLER.** L. Fr. To demand back. *Ne purra mie repeler, ne reaver*; may not demand back nor have back. *Britt.* c. 93.

**Repellitur a sacramento infamis.** An infamous person is repelled from an oath; is thrust back from taking an oath, or not allowed to be sworn as a witness. *Bract.* fol. 185. *Co. Litt.* 158 a. A leading maxim in the law of evidence, very recently abrogated in England by the statute

called Lord Denman's Act, 6 & 7 Vict. c. 85. *Best on Evid.* 163, § 129.

In *Fleta*, the maxim is applied to jurors. *Fleta*, lib. 4, c. 8, § 2.

REPENTER. L. Fr. To change one's mind; to repent. *Mes ne se purrount repentir ne retrere*; but they may not repent nor draw back. *Britt.* c. 120.

REPETITION. [L. *repetitio*, from *repetere*, to demand back.] In the civil law. The recovery back of money paid under a mistake of law. 1 *Story's Eq. Jur.* § 111, note.

REPETITUM NAMIUM. L. Lat. In old English practice. A repeated, second or reciprocal distress; withernam. 3 *Bl. Com.* 148.

REPETUNDARUM CRIMEN. Lat. In the Roman law. The crime of bribery or extortion in a magistrate, or person in any public office. *Calv. Lex. Hallifax, Anal.* b. 3, c. 12, num. 73. *Dig.* 48. 11. *Cod.* 9. 27.

REPLEADER. In practice. To plead again; to plead over again. A pleading over again. This is sometimes allowed by the court, on motion, in cases where, by the misconduct or inadvertence of the pleaders, issue has been joined on a fact totally immaterial or insufficient to determine the right, so that the court, upon the finding of the jury, cannot know for whom judgment ought to be given. As if, in an action on the case in assumpsit against an executor, he pleads that *he himself*, instead of the testator, made no such promise; or if, in an action of debt on bond conditioned to pay ten pounds ten shillings on a certain day, the defendant pleads payment of *ten pounds*,—in such cases the court will, after a verdict, award a repleader, (*quod partes replacitent*;) the effect of which is, that the pleadings must begin *de novo*, at that stage of them, whether it be the plea, replication or rejoinder, &c. wherein there appears to have been the first defect or deviation from the regular course. 3 *Steph. Com.* 630. 3 *Bl. Com.* 395.

REPLEDER. L. Fr. In old practice. To replead. *Repledes si vous voulez*; replead, if you will. *Yearb.* P. 3 Hen. VI. 4.

REPLEGIARE. L. Lat. In old English and Scotch practice. To take back a pledge; to replevy. 3 *Bl. Com.* 13. *Scoticè*, to replege. *Skene de Verb. Sign.*

To take back on pledge, or surety.\* To redeem a thing detained or taken by an-

other, by putting in legal sureties. *Cowell.*

To replevy a man. See *De homine replegiando*. A writ for this purpose. *Fleta*, lib. 2, c. 70, § 14. Otherwise written *replegiari*. *Id. ibid.*

An action or writ of replevin. *Litt.* sect. 219. *En replegiare port per*; in replevin brought by. *Dyer*, 1 b.

REPLEGIARE DE AVERIIS. L. Lat. In old English practice. Replevin of cattle. A writ brought by one whose cattle were distrained, or put in the pound, upon any cause by another, upon surety given to the sheriff to prosecute or answer the action in law. *Cowell.* *F. N. B.* 68 D. *Reg. Orig.* 81.

REPLEGIARI FACIAS. L. Lat. (You cause to be replevied.) In old English law. The original writ in the action of replevin; superseded by the statute of Marlbridge, c. 21. 3 *Bl. Com.* 146.

REPLEVER. L. Fr. In old English law. To replevy. *Si le tenaunt face replever la distresse*; if the tenant cause the distress to be replevied. *Britt.* c. 68.

REPLEVIABLE. That may be replevied, or taken back on pledge. See *Replevisable*.

REPLEVIN. [L. Lat. *replevina*, from L. Fr. *repliver*, q. v.] In practice. A personal action which lies to recover possession of goods wrongfully taken. It was originally the peculiar remedy in cases of wrongful distress, but may now be brought in all cases of unlawful taking. 3 *Bl. Com.* 13, 146. 1 *Arch. N. Prius*, 466. In New-York, it is allowed in cases of wrongful detention also. 2 *R. St.* [522,] 430, § 1. It is the proper form of action to recover the specific thing taken, and is the regular mode of contesting the validity of the taking; the plaintiff being bound by sureties to prosecute the suit with effect, and to return the goods if return thereof be adjudged. See *United States Digest*, Replevin.

*Replevin* is said to have originally meant a *re-delivery of the pledge*, or thing taken in distress, to the owner, upon his giving security to try the right of the distress. 3 *Bl. Com.* 13, 146. But its radical meaning, (as expressed by *replevir*, (q. v.) its probable root,) seems to have rather been, a *re-delivery on pledge*; and this supposition is confirmed by its ancient use in the sense of *bail*. See *infra*.

REPLEVIN. L. Fr. [from *replevir*,

q. v.] In old English law. Bail; delivery of a person on pledges or sureties. *Stat. Westm.* 1, c. 15.

REPLEVIR. L. Fr. In old English law. To take back on pledge; to replevy, *Britt.* c. 20. Applied to land. *Fet As-saver*, §§ 24, 25.

To let go, on bail. *Et les plevissables jesques mesme le temps* replevir; and those that are bailable to deliver on bail until the same time. *Britt.* c. 29.

REPLEVISABLE, *Replevissable*, *Plevissable*. L. Fr. Bailable. *Britt.* c. 29. *Stat. Westm.* 1, c. 15.

REPLEVISII. In old English law. To let one to mainprise upon surety. *Cowell*.

REPLEVY. In practice. To get back goods on a writ of replevin.

REPLICARE. Lat. [from *re*, again, and *plicare*, to fold.] In the civil law and old English pleading. To reply; to answer a defendant's plea, (*exceptio*.) *Querens replicationem non habet, nec pertinet ad ipsum* replicare, donec, &c.; the plaintiff has not the replication, nor does it belong to him to reply, until, &c. *Bract.* fol. 191 b. *Id.* 194 b. *Fleta*, lib. 4, c. 16, § 3.

Literally, to fold back, or unfold. See *Replicatio*.

REPLICATIO. Lat. [from *replicare*, to unfold.] In the civil law and old English pleading. The answer of a plaintiff (*actor*) to the exception or plea of a defendant, (*reus*;) corresponding with, and giving name to the *replication* in modern pleading. *Inst.* 4. 14, pr. See *Dig.* 44. 1. 2. 1. Called by Paulus, a contrary exception, (plea,) as it were, the exception of an exception, (*contraria exceptio, quasi exceptionis exceptio*.) *Id.* 44. 1. 22. 1. *Contra exceptionem vero, licet ab initio competens videatur, subveniri poterit petenti* ope replicationis; *ut si quis petat, excipere poterit tenens de pacto postea interveniente ne petat, contra quam replicari poterit à petente de pacto posterius interposito quod petat*. But against the exception, (plea) though at first it may seem sufficient, the demandant (plaintiff) may be aided by means of a replication; as if one should demand (sue,) the tenant (defendant) may except (plead) a subsequent agreement not to sue, against which the plaintiff may plead in reply a still subsequent agreement that he might sue. *Bract.* fol. 400. This is substantially the same example as that

given by Justinian. *Inst. ub. sup.* Called in *Fleta*, *exceptio quæ competit actori contra exceptionem rei*. *Fleta*, lib. 6, c. 36, § 10. This is in conformity with the language of the Digests. *Dig. ub. sup.*

The nature of this pleading and the derivation of the word itself are thus explained in the Institutes: Sometimes it happens that an exception [the defendant's answer to the plaintiff's action] which *primâ facie* seems just, yet operates as a bar unjustly, (*tamen iniquè nocet*;) and when this takes place, there is need of another allegation to help the plaintiff; which is called a *replication*, because by it the force or law of the exception is *unfolded* and destroyed, (*replicatio vocatur quia per eam replicatur atque resolvitur jus exceptionis*.) *Inst.* 4. 14, pr. According to the modern civilians, it is so called because it *unfolds* and lays open (*replicet ac patefaciat*) the injustice of the exception that had been folded together, and, as it were, covered up; or rather because it unfolds and opens (*explicet atque aperiat*) the equity of the action that had been covered up, and, as it were, folded together, by the defendant's exception. *Hotomannus. Præteus. Calv. Lex.*

REPLICATION. [L. Fr. *replication*; Lat. *replicatio*, q. v.] In pleading. The plaintiff's answer of fact to the defendant's plea in an action at law.\* *Steph. Pl.* 58, 59. 3 *Bl. Com.* 309, 310.

The plaintiff's or complainant's reply to the defendant's answer, in a suit in equity.\*—The contestation of the answer. *Gilb. For. Rom.* 113.—The plaintiff's avoidance or denial of the answer or defence, and in the maintenance of the bill, to draw the matter to a direct issue, which may be proved or disproved by testimony. *Cooper's Eq. Pl.* 328, 329. *Story's Eq. Pl.* § 877.

This pleading, together with its name, is obviously taken from the Roman law, as will appear on comparing the Institutes with Bracton, under the appropriate heads. See *Replicatio*. And see *Story's Eq. Pl.* § 677.

REPONE. [from Lat. *reponere*, to put back.] In Scotch practice. To replace; to restore to a former state or right. 2 *Alison's Crim. Pr.* 351.

REPORT. [L. Lat. *reportus, relatio*, from *reportare*, to bring again, to relate.] A public account or relation of a case judicially argued and determined; includ-

ing a statement of the facts of the case, the arguments of counsel, and the opinion of the court, expressing the reasons for the judgment or decision given.\* Lord Coke defines *report* to be "a public relation, or a bringing again to memory cases judicially argued, debated, resolved or adjudged in any of the king's courts of justice, together with such causes and reasons as were delivered by the judges of the same." *Co. Litt.* 293. The reports of judicial decisions now constitute, both in Great Britain and the United States, a principal and most authoritative source of municipal law. 1 *Bl. Com.* 71. 1 *Kent's Com.* 470. The word itself seems essentially French. *Litt.* sect. 514.

**REPORT.** In practice. The formal statement in writing made to a court by a master in chancery, a clerk, or referee, as the result of his inquiries into some matter referred to him by the court.

**REPORTARE.** L. Lat. In old English practice. To report. *Claus.* 28 Edw. I. m. 3, d.

**REPORTUS.** L. Lat. A report. Spelman gives this barbarous word, but Lord Coke uses *relatio*. 8 *Co.* pref.

**REPOSITION OF THE FOREST.** [L. Lat. *repositio forestæ*.] In old English law. An act whereby certain forest grounds, being made *purlieu* (q. v.) upon view, were by a second view laid to the forest again, [put back into the forest.] *Manwood.* Cowell.

**REPREENSAILLES.** L. Fr. Seizures; reprisals. *Kelham.*

**REPREENER, Reprendre, Reprender.** L. Fr. To retake; to take back. *Kelham.* *Represt, reprist*; taken back. *Id.*

**REPRESENTATION.** [Lat. *repræsentatio*, from *repræsentare*, to be like.] The occupying of another's place; the acting in the place of another. The principle by which an heir, executor or administrator, succeeds to the rights and liabilities of his ancestor, testator or intestate.\* 2 *Steph. Com.* 243.

In the law of distribution and descent. The principle upon which the issue of a deceased person take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living; the taking or inheriting *per stirpes*. 2 *Bl. Com.* 217, 517. 2 *Kent's Com.* 425. 4 *Id.* 391. 2 *Hilliard's Real Prop.* 195, [202.]

**REPRESENTATION.** In the law of

insurance. A collateral statement, either by writing not inserted in the policy, or by parol, of such facts or circumstances relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risks. 1 *Marshall on Ins.* 450. Mr. Duer objects to this definition, and substitutes the following: A statement of facts, circumstances or information, tending to increase or diminish the risks as they would otherwise be considered, made prior to the execution of the policy by the assured or his agent to the insurer, in order to guide his judgment in forming a just estimate of the risks he is desired to assume. It is usually made by parol, or by a writing not inserted in the policy, but when the intention as to the construction is sufficiently declared, may be expressed in the policy. 2 *Duer on Ins.* 644, 656. See 1 *Phillips on Ins.* 214. 3 *Kent's Com.* 282. 5 *Hill's (N. Y.) R.* 188.

**REPRESENTATIVE.** One who represents another; one who occupies another's place, and succeeds to his rights and liabilities. Executors and administrators represent, in all matters in which the personal estate is concerned, the person of the testator, [or intestate] as the heir does that of his ancestor; so that the heirs and executors (or administrators) of a deceased party are sometimes compendiously described as his *real and personal representatives*. 2 *Steph. Com.* 243.

**REPRESTARE.** L. Lat. In old European law. To re-grant a thing to the grantor, for a certain term; to re-let a thing or estate to the lessor. *Spelman.*

**REPRIEVE.** [from L. Fr. *reprandre*, to take back.] In criminal law. The withdrawing of a sentence of death for an interval of time, whereby the execution is suspended. 4 *Bl. Com.* 394. Cowell writes the word *reprive*.

**REPRISAL, Reprisel.** [L. Lat. *reprisalia*, (q. v.) from L. Fr. *reprise*, a retaking.] A taking again; a taking back; retaking; recaption. The re-possessing one's self of a thing unjustly taken by another.\* 3 *Bl. Com.* 4. See *Recaption*.

A taking of one thing in satisfaction for another, (*captio rei unius in alterius satisfactionem*.) *Spelman.* Frequently used in the plural, *reprisals*, (*reprisaliæ*, *represaliæ*.) *Id.* *Loccen. de Jur. Mar.* lib. 3, c. 5. 1 *Kent's Com.* 61. A taking in return; a

taking by way of retaliation. See *Letters of marque and reprisal*.

REPRISALIA, *Represalia, Repraesalia, Repressalia, Pressalia*. L. Lat. In civil and old maritime law. Reprisal. *Spelman. Loccen. de Jur. Mar.* lib. 3, c. 5.

REPRISES. In English law. Deductions and duties which are yearly paid out of a manor and lands, as rent-charge, rent-seek, pensions, corrodies, annuities, &c. so that when the clear yearly value of a manor is spoken of, it is said to be so much per annum *ultra reprisas*, besides all *reprises*. *Cowell*.

Reprobata pecunia liberat solventem. Money refused [the refusal of money tendered] releases him who pays [or tenders it.] 9 Co. 79 a, *Peytoe's case*.

REPROBATOR, *Action of*. In Scotch law. An action or proceeding intended to convict a witness of perjury; to which the witness must be made a party. *Bell's Dict.*

REPROBUS, *Reproba*. Lat. [from *reprobare*, to reject.] In old English law. Bad or spurious; reprobate. A term applied to money which might be rejected or refused. *De illis-qui falsam fabricant monetam, et qui de non reproba faciunt reprobam, sicut sunt retonsores denariorum*; of those who make false or counterfeit money, and who out of good money make bad, such as clippers of coin. *Bract. fol.* 119 b. See *Fleta*, lib. 1, c. 22, § 4. "*Reprobate silver*" is used in the English translation of the old Testament. *Jerem.* vi. 30.

REPUBLICATION. A second publication of a will, either expressly or by construction. See 1 *Jarman on Wills*, 174, (199, Perkins' ed.) See *Publication*.

REPSILVER. In old records. Money paid by servile tenants for exemption from the customary duty of *reaping* for the lord. *Cowell*.

REPUDIUM. Lat. In the Roman law. A breaking off the contract of espousals, or a marriage intended to be solemnized. Sometimes translated *divorce*. But this was not the proper sense. *Dig.* 50. 16. 191. *Id.* 50. 16. 101. 1. *Id.* 24. 2. 2. See *Taylor's Civ. Law*, 349.

REPUGNANT. [Lat. *repugnans*, from *repugnare*, to fight against.] Contrary to; in conflict with. A condition *repugnant* to the nature of the estate to which it is annexed, is void. 1 *Steph. Com.* 281.

REPUTATION. [Lat. *reputatio*, from

*reputare*, to consider.] In the law of evidence. The estimation in which a person is held in the community where he has resided. Marcy, J. 2 *Wendell's R.* 352, 354. Character. Duncan, J. 3 *Serg. & Rawle's R.* 337. "Reputation is not what this or what that man thinketh, but that which many men have said or thought, who have more reason to know it; *et quænam est inter illos reputatio*." 1 *Leon.* 15.

REPUTED. [Lat. *reputatus*, from *reputare*, to consider.] Considered; generally supposed.

This word has a much weaker sense than its derivation would appear to warrant; importing merely a supposition or opinion derived or made up from outward appearances, and often unsupported by fact. The term "reputed owner" is frequently employed in this sense. 2 *Steph. Com.* 206.

"REQUEST," in a will, held to raise a trust or bequest by implication. 1 *Bro. C. C.* 489. 2 *Id.* 226. *Ambl.* 520, note (2.)

REQUESTS. See *Court of Requests*.

REQUISITION. [Lat. *requisitio*, from *requirere*, to demand.] In international law. The formal demand by one government upon another, of the surrender of a fugitive criminal. 1 *Kent's Com.* 36—38, and notes.

RERE. L. Fr. [from Lat. *radere*.] To erase; to erase. *Kelham*.

RERE-FIEFS. In Scotch law. Inferior fiefs; portions of a fief or feud granted out to inferior tenants. 2 *Bl. Com.* 57.

*Rerum ordo confunditur, si unicuique jurisdictio non servatur*. The order of things is confounded, if its proper jurisdiction is not preserved to each. 4 *Inst. Proëm.*

*Rerum suarum quilibet est moderator et arbiter*. Every one is the regulator and disposer of his own property. *Co. Litt.* 223 a.

RES. Lat. In the civil and old English law. A thing; things. A term of the most extensive import in the law, including both objects of property, and things not the objects of property, (*quæ vel in nostro patrimonio, vel extra patrimonium nostrum habentur*.) *Inst.* 2. 1, pr. *Dig.* 50. 16. 5, pr. *Bract. fol.* 7 b. According to Lord Coke, it has a general signification, including both corporeal and incorporeal things of whatever kind, nature or species. 3 *Inst.* 182.

By "*res*," according to the modern

civilians, is meant every thing that may form an *object* of rights, in opposition to *persona*, which is regarded as a *subject* of rights. *Res*, therefore, in its general meaning, comprises *actions* of all kinds; while in its restricted sense, it comprehends every object of right except actions. 1 *Mackeld. Civ. Law*, 151, § 146. This has reference to the fundamental division of the Institutes, that all law relates either to *persons*, to *things*, or to *actions*. *Inst.* 1. 2. 12.

Under the name of *res*, (a thing,) is included, also, according to the Digests, any part of a thing; (*appellatione rei pars etiam continetur.*) *Dig.* 50. 16. 72. It also included both the fruits (*causæ*) of a thing, and the rights (*jura*) incident to it. *Id.* 50. 16. 23. The following are among the various significations of this word in the civil law:

A business, (*negotium*;) matter, (*materia*;) question, (*quæstio*.) *Dig.* 48. 19. 38. 5.

Equity, (*æquum et bonum*;) reason, (*causa*.) *Dig.* 48. 8. 1. 3.

An inheritance, (*hæreditas*.) *Calv. Lex.*

A suit, (*lis*.) *Id.* The subject matter of a suit; a thing sued for. *Story's Conf. of Laws*, § 592 a. 20 *Howard's R.* 599. See *In rem*.

Substance, (*substantia*.) *Calv. Lex.*

Property, (*proprietas*.) *Id.*

Ownership, (*dominium*.) *Id.* *Dig.* 41. 1. 52.

A contract, (*contractus*.) *Dig.* 50. 16. 6. *Calv. Lex.*

Punishment, (*pœna*.) *Dig.* 48. 19. 2, pr.

Truth, (*veritas*.) *Dig.* 48. 10. 1. 4.

Profit and emolument, (*utilitas et emolumentum*.) See *Actio de in rem verso*.

Empire. *Tayl. Civ. Law*, 62.

**Res denominatur a principaliori parte.** A thing is named from its more principal part. 5 *Co.* 47 b, *Gilbert Littleton's case*. Thus, a suit in equity is frequently termed a *bill* in equity, the bill being the commencement and foundation of the suit, (*origo rei et caput sectæ*.) *Id.* *ibid.*

**Res perit [suo] domino.** The thing perishes or is lost to its owner; the loss of the thing falls upon its owner. A maxim in the law of bailment, expressive of the principle that where an article bailed is damaged or lost without fault of the bailee, the loss must fall upon the owner. *Story on Bailm.* § 426, 427 a. 2 *Kent's Com.* 591. *Story, J. 3 Story's R.* 359. *Broom's*

*Mar.* 112, [176.] Applied also to cases where a loss is to be shared among several having an interest. 1 *Story's Eq. Jur.* 102. •*Story, J. 3 Sumner's R.* 58.

**Res transit cum suo onere.** The thing passes with its burden. Where a thing has been encumbered by mortgage, the incumbrance follows it, wherever it goes. *Bract.* fol. 47 b, 48. *Fleta*, lib. 3, c. 10, § 3. See *Transit terra cum onere*.

**RES ACCESSORIA.** Lat. In the civil law. An accessory thing; that which belongs to a principal thing, or is in connection with it. 1 *Mackeld. Civ. Law*, 155, § 152. Otherwise termed *accessio*. *Id.* § 153. **Res accessoria sequitur rem principalem.** An accessory thing follows the principal thing. *Broom's Mar.* [368.]

**RES CADUCA.** Lat. In the civil law. A fallen or escheated thing; an escheat. *Hallifax, Anal.* b. 2, c. 9, n. 60.

**RES COMMUNES.** Lat. In the civil law. Common things. Things common to all, by the law of nature; as air, running water, the sea, and sea-shore. *Inst.* 2. 1. 1. *Dig.* 1. 8. 2. 1. Bracton and Fleta make a distinction between common and public things, but Justinian uses the terms indifferently. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 4. *Inst.* 2. 1. 2. Later civilians have distinguished them thus: *Res communes* are those things which, considered with reference to the property in them, are *res nullius*, belonging to no one, but considered with reference to their use, belong to all men. *Res publicæ* are those the property of which is in the people, the use being common to every one of the people. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 325. See *Tayl. Civ. Law*, 471, 472.

**RES CONTROVERSA.** Lat. In the civil law. A matter controverted; a matter in controversy; a point in question; a question for determination; (Gr. τὸ κρινόμενον.) *Calv. Lex.*

**RES CORONÆ.** L. Lat. In old English law. Things of the crown; such as ancient manors, homages of the king, liberties, &c. *Fleta*, lib. 3, c. 6, § 3.

**RES CORPORALES.** Lat. In the civil law. Corporeal things; things which can be touched, (*quæ tangi possunt*;) or are perceptible to the senses. *Dig.* 1. 8. 1. 1. *Inst.* 2. 2. *Bract.* fol. 7 b, 10 b, 13 b. *Fleta*, lib. 3, c. 1, § 4. Called by Cicero, *res quæ sunt*, (things which are,) as distinguished from incorporeal things, which are termed *res quæ intelliguntur*, (things

which are understood, or mentally perceived.) *Cic. Topic.* 5.

RES FUNGIBILES. Lat. In the civil law. Fungible things, (q. v.)

RES FURTIVÆ. L. Lat. In Scotch law. Goods which have been stolen. *Bell's Dict.*

RES GESTA. Lat. A thing done; a transaction. RES GESTÆ. Things done; the essential circumstances of a transaction. *Story, J. 3 Story's R.* 504. See 36 *Maine R.* 295. 5 *Maryland R.* 450. *United States Digest*, Evidence.

RES IMMOBILES. Lat. In the civil law. Immovable things. Such things as, by their nature, are physically incapable of a change of place; such as lands; or which cannot be removed to another place without injury to their substance; such as buildings. 1 *Mackeld. Civ. Law*, 152, § 147. *Tayl. Civ. Law*, 475.

RES INCORPORALES. Lat. In the civil law. Incorporeal things; things which cannot be touched, (*quæ tangi non possunt*;) such as those things which consist in right. *Inst.* 2. 2. *Dig.* 1. 8. 1. 1. *Bract.* fol. 7 b, 10 b. *Fleta*, lib. 3, c. 1, § 4.—Such things as the mind alone can perceive, (*res quæ intelliguntur*.) See *Res corporales*.

RES INTEGRA. Lat. In the civil law. A thing not acted upon; a thing as it was; a thing entire or untouched; a thing not made the subject of action or decision; a new thing or matter, (*res nova*.)<sup>\*</sup> A thing was said to be *integra*, until something was begun to be done about it, (*donec quid geri captum est*.) *Calv. Lex.* In the contract of sale, the matter was said to be *integra*, until closed by the payment of the price, or delivery of the thing. *Calv. Lex. Inst.* 3. 30. 4. A question while under debate in the Roman Senate, was called *res integra*; when determined, *res peracta*. *Adam's Rom. Ant.* 21. *Plin. Epist.* vi. 13.

This has become a common phrase in English and American law, to denote a new case, or a perfectly new point, unaffected by any former adjudications. 1 *Wooddes. Lect.* 120. "If this was *res integra*, and I was at liberty to follow my own opinion, I should be very unwilling to admit such evidence." Lord Talbot, *C. Cas. temp. Talb.* 79, 80. "If the question was *res integra*, untouched by *dictum* or decision," &c. Lord Eldon, *C. Jacob's R.* 126. "If this case were perfectly *res integra*, there might have been great doubt." Lord

Ellenborough, 9 *East*, 206. See *Id.* 10 *East*, 123.

*Res integra* is well contrasted with *res judicata* by Blackstone, *arg.* 1 *W. Bl.* 238.

RES INTER ALIOS ACTA. Lat. A thing done between others, or between third parties or strangers.

*Res inter alios acta alteri nocere non debet.* A thing done between others ought not to injure another. A transaction between other or strange parties, ought not to injure a person. A transaction between two parties ought not to operate to the disadvantage of a third. *Co. Litt.* 155 b. *Wingate's Max.* 327, max. 86. *Broom's Max.* 432, [735.] Persons are not to be affected by the acts or words of others to which they were neither party nor privy, and which consequently they had no power to prevent or control. *Best on Evidence*, 120, § 102. The use of *alios* and *alteri*, both having the sense of *other*, perhaps adds force to this maxim, the parties to the transaction being "*others*" as to the third person, and he in turn being "*another*," as to them; but it renders a close translation scarcely intelligible. The substitution of *nemini* for *alteri*, in one of the following forms, avoids this verbal difficulty.

*Res inter alios actæ alteri nocere non debent*, is a plural form of this maxim, quoted by Mr. Best in his Treatise on Evidence. A third party is not to be injured or affected by the acts of others with whom he is unconnected, either personally, or by his agents, or by those whom he represents. *Best on Evid.* 378, § 339. The same maxim is otherwise expressed, *Res inter alios actæ nemini nocere debent, sed prodesse possunt*. Things done between others ought to injure no one, but may benefit. 6 *Co.* 1 b, *Bruerton's case*. *Wingate's Max.* 327, max. 86. And see 4 *Inst.* 279. These additions, however, are, according to Mr. Best, unnecessary, for the rule is only of general, not universal application, there being several exceptions both ways. Neither does the expression *inter alios* mean that the act done must be the act of more than one person, it being also a maxim of law that *Factum unius alteri nocere non debet*. *Co. Litt.* 152 b.

This important maxim seems to be immediately derived from the canon law, in which it was expressed, *Res inter alios acta aliis præjudicium regulariter non adfert*. A thing done between others regularly works no prejudice to third parties. *Lan-*

*cell. Inst. Jur. Can.* lib. 3, tit. 15, § 9. Or it may have been taken from the caption of title 60, book 7, of the Code of Justinian: *Inter alios acta vel judicata, aliis non nocere*. That its ultimate source is in the civil law, appears from the following rules which embody its principle: *Inter alios res gestas aliis non posse præjudicium facere sæpe constitutum est. Cod. 7. 60. 1. Inter alios factum transactionem absenti non posse facere præjudicium notissimi juris est. Id. 7. 60. 2.* It is found appealed to, as a recognized maxim of law, as early as the reign of Edw. II. *Yearb. M. 3 Edw. II. 53.* See *Broom's Max.* 432—443. In the Digests, the maxim appears to be confined to *res judicata*, (q. v.)

**RES JUDICATA**, (or **ADJUDICATA**.) Lat. A matter adjudged; a thing judicially acted upon or decided; a judgment. That which puts an end to controversy by the decision of a judge, (*quæ finem controversiarum pronuntiatione judicis accipit*.) *Dig. 42. 1. 1.* A phrase of the civil law, constantly quoted in the books. 3 *Kent's Com.* 120. *Best on Evid.* 464. 3 *Hill's (N. Y.) R.* 399.

*Res judicata pro veritate accipitur.* A matter adjudged is taken for truth. *Dig. 50. 17. 207.* A matter decided or passed upon by a court of competent jurisdiction, is received as evidence of truth. 2 *Kent's Com.* 120. A maxim adopted in the common law, to express the authority and finality of judicial decisions. *Co. Litt.* 103 a. *Broom's Max.* 428, [242, 729.] *Best on Evid.* 41, § 44. See *Id.* 464—470, §§ 422—429. Another form of this maxim is *Judicium pro veritate accipitur. Co. Litt.* 39 a, 168 a, 236 b. The doctrine of *res judicata* is held not to apply to motions in the course of practice. 5 *Hill's (N. Y.) R.* 493.

*Sæpe constitutum est, res inter alios judicatas aliis non præjudicare.* It has often been determined that matters adjudged between other parties do not prejudice. *Dig. 42. 1. 63.* *Res inter alios judicata aliis non obest. Id. 44. 1. 10.* *Res inter alios judicatæ nullum aliis præjudicium faciunt. Id. 44. 2. 1.*

**RES MOBILES.** Lat. In the civil law. Moveable things; things which may be transported from one place to another, without injury to their substance and form. 1 *Mackeld. Civ. Law*, 152, § 147. Things corresponding with the chattels personal of the common law. 2 *Kent's Com.* 347.

**RES NOVA.** Lat. A new matter; a new point or question. "If it were *res nova*, I should be apt to think so too." Holt, C. J. 6 *Mod.* 161.

**RES NULLIUS.** Lat. In the civil law. Things of no one; the property of nobody; such as things sacred, (*sacræ*.) religious, (*religiøsæ*.) and holy, (*sanctæ*.) *Inst. 2. 1. 7. Dig. 1. 8. 2. Tayl. Civ. Law*, 470. Bracton ranks also under this head, wild animals, derelict property, wrecks, waifs, and strays. *Bract. fol. 8.* And see *Fleta*, lib. 3, c. 1, §§ 6, 9. *Grotius, de Jur. Bel.* lib. 3, c. 6, § 9.

**RES PRIVATÆ.** Lat. In the civil law. Private things; things belonging to individuals, (*quæ singulorum sunt*.) *Dig. 1. 8. 1. pr.*

**RES PUBLICÆ.** Lat. In the civil law. Public things; such as rivers, harbors, the banks of rivers, &c. *Inst. 2. 1. 2, 4. Dig. 1. 8. 1, pr. Bract. fol. 8. Fleta*, lib. 3, c. 1, § 4. *Tayl. Civ. Law*, 472. Sometimes called *res publici juris*. 2 *Wooddes. Lect.* 3.

**RES QUOTIDIANÆ.** Lat. Every day matters; familiar points or questions. The title of a work of Gaius, from which the Institutes of Justinian were in part compiled. *Inst. proëm.* § 6.

**RES RELIGIOSÆ.** Lat. In the civil law. Religious things. Places in which a dead body was laid. *Inst. 2. 1. 9. Dig. 1. 8. 6. 4.*

*Res sacra non recipit æstimationem.* A sacred thing does not admit of valuation. *Dig. 1. 8. 9. 5.*

**RES SACRÆ.** Lat. In the civil law. Sacred things. Things consecrated by the pontiffs to the service of God, such as sacred edifices, and gifts or offerings, (*donaria*.) *Inst. 2. 1. 8. Dig. 1. 8. 6. 3.* Chalices, crosses, censers. *Bract. fol. 8.* The place where a sacred edifice stood, continued to be sacred, though the edifice was destroyed. *Inst. ub. sup. Dig. ub. sup.* See *Tayl. Civ. Law*, 470.

**RES SANCTÆ.** Lat. In the civil law. Holy things; things protected against injury by man; such as the walls and gates of a city. *Inst. 2. 1. 10. Dig. 1. 8. 8, pr. and 2.* Walls were said to be holy, because any offence against them was punished capitally. *Inst. 2. 1. 10. Bract. fol. 8. Fleta*, lib. 3, c. 1, § 7. *Fleta* calls them *quasi sacra*.

**RES UNIVERSITATIS.** Lat. In the civil law. Things of a community; such

as theatres and race-grounds, (*stadia*,) and other like things which were the common property of a city. *Inst.* 2. 1. 6. *Dig.* 1. 8. 6. 1. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 6. See *Tayl. Civ. Law*, 473.

**RESCUIT.** [Lat. *receptio*.] In old English practice. An admission or receiving a third person to plead his right in a cause formerly commenced between two others. As, in an action by tenant for life or years, he in the reversion might come in and pray to be received to defend the land, and to plead with the demandant. *Cowell. Bro. Abr.* Resceit. Called by the civilians, *admissio tertii pro suo interesse*, (the admission of a third person, on account of his interest.)

**RESCEU, Rescue.** L. Fr. Received. *Novæ Narr.* 5 b. *Kitchin.* *Resceux*, (plur.) *Britt.* c. 2.

**RESCISSIO.** Lat. [from *rescindere*, to annul or avoid.] In the civil law. An annulling, avoiding, or making void; abrogation; rescission. *Cod.* 4. 44. *Pothier, Contr. of Sale*, num. 331.

**RESCISSORY ACTION.** [Lat. *actio rescissoria*.] In the civil law. An action to rescind or avoid a title by prescription. *Inst.* 4. 6. 5. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1132.

An action to rescind a contract of sale, on the ground of injustice in the price, or what is termed *lesion*. *Cod.* 4. 44. *Pothier, Contr. of Sale*, num. 331, *et seq.*

In Scotch law. An action to rescind a contract or deed. 1 *Forbes' Inst.* part 4, p. 158. See *Bell's Dict.*

**RESCOUS.** L. Fr. and Eng. [from Fr. *rescourrer*, to force from, or recover back; L. Lat. *rescussus*.] A forcible taking back of goods distrained, or in the custody of the law.\* 3 *Bl. Com.* 146.

The forcible delivery of a defendant, or other party arrested, from the officer who is carrying him to prison.\* *Id. ibid.*

A writ which lay in cases of rescous, (*breve de rescussu*.) *F. N. B.* 101 C. D. *Reg. Orig.* 116 b, 117.

**RESRIPTA.** Lat. In the civil law. Rescripts. *Cod.* 1. 23. See *Rescriptum*. A term sometimes applied to the original writs of the common law. *Co. Litt.* 11 a.

**RESRIPTUM.** Lat. [from *rescribere*, to write back.] In the civil law. A species of imperial constitution, in the form of an answer to some application or petition; a rescript. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 1, tit. 2, § 53. Otherwise called

a letter or epistle, (*epistola*.) *Inst.* 1. 2. 6. See a form of *rescript*, *Dig.* 37. 14. 17.

**RESCUE.** [L. Fr. *rescouse*; L. Lat. *rescussus*.] The modern form of *rescous*, (q. v.) A forcible taking back of persons or property out of the custody of the law.\* 3 *Bl. Com.* 12. 4 *Id.* 125.

In criminal law. The forcibly and knowingly freeing another from an arrest or imprisonment.\* 4 *Bl. Com.* 131. 4 *Steph. Com.* 256.

**RESCUSSOR.** L. Lat. In old English law. A rescuer; one who commits a rescous. *Cro. Jac.* 419. *Cowell.*

**RESCUSSUS.** L. Lat. [from L. Fr. *rescous*.] In old English law. Rescue; forcible liberation or release. *Spelman.*

**RESCUTERE.** L. Lat. In old English law. To rescue. *Rescussit*; (he) rescued. *Reg. Orig.* 117. 3 *P. Wms.* 484. *Rescusserunt*; (they) rescued. *Reg. Orig.* 118.

**RESCYT.** L. Fr. Resceit; receipt; the receiving or harboring a felon, after the commission of crime. *Britt.* c. 23.

**RESEANTISA.** L. Lat. [from L. Fr. *reseance*.] In old English and Scotch law. Residence. *Fleta*, lib. 6, c. 3, § 2. *Spelman.*

A severe or long continued illness, confining a person to his house, (*morbus validus, seu veteranus quo quis exire de suis ædibus prohibetur*.) *Id. Glanv.* lib. 1, c. 11. Described by Skene, as "a long and old sickness, or a resident heavy infirmity and sore sickness." *Skene ad Reg. Maj.* lib. 1, c. 8. See *Id. De Verb. Signif.* The *essoin de malo lecti* was more anciently termed *de infirmitate reseantisæ*, or *de reseantisa*. 1 *Reeves' Hist.* 115. *Fleta*, lib. 6, c. 10, § 1.

**RESEAUNT, Reseant.** L. Fr. Abiding; dwelling; residing. *Britt.* c. 98.

**RESEISER.** [L. Lat. *reseisire*.] In old English law. A taking back of seisin.\* A taking again of lands into the hands of the king, whereof a general livery or *ouster-le-main* was formerly mis-sued, contrary to the form and order of law. *Staundf. Prær. Reg.* 26. *Cowell.*

**RESERVANDO.** L. Lat. (Reserving.) In old conveyancing. An apt word of reserving a rent. *Co. Litt.* 47 a.

**RESERVATION.** [Lat. *reservatio*, from *reservare*, to keep back or save out.] In conveyancing. A clause in a deed whereby the grantor reserves some new thing to himself, out of the thing granted,

and not in *esse* before. 4 *Kent's Com.* 468. *Co. Litt.* 47 a. Distinguished from an *exception*, which is always of part of the thing granted, and of a thing in *esse*. *Id. ibid.* See 2 *Selden's R.* 458.

RESET. In Scotch law. The receiving or harboring of a proscribed or outlawed person. *Skene de Verb. Signif. Cowell.* *Reset of theft*, is the receiving goods knowing them to be stolen, or the harbouring and concealing the thief from justice. *Bell's Dict. Resetter*; a receiver. *Cowell.* See *Resset*, *Recettour*.

RESIANCE, *Resiancy*. [L. Lat. *resiantia*, from L. Fr. *reseant*, resident.] In old English law. Residence; a man's abode or continuance in a place. *O. N. B.* 85. *Cowell.* 2 *Inst.* 99. 1 *Crabb's Real Prop.* 498, § 641. "*Resiance and mansion of the council.*" *Bacon's Works*, iv. 261.

RESIANT, *Resient*, *Resyaunt*. [from L. Fr. *reseant*, resident.] In old English law. Continually dwelling or abiding in a place; resident; a resident. *Kitchin*, 33. *Cowell.* 2 *Inst.* 99. "*Resiants and inhabitants within a manor.*" 3 *Leon.* 8, case 21. See *Resyaunt*.

RESIANTIA, *Rescantia*. L. Lat. In old English law. Resiance; residence. *Spelman.* See *Resiance*.

RESIDENCE, [O. Eng. *resiance*; L. Fr. *reseance*; L. Lat. *resiantia*, *reseantia*, *reseantisa*; from Lat. *residere*, to sit down.] The act or state of being seated or settled in a place; the act, state or habit of dwelling or abiding in a place; the act or state of being resident, or inhabitant; inhabitancy or habitancy.\* The act of abiding or dwelling in a place for some continuance of time. *Webster*.

The place where one resides, (*locus quo quis residet*;) habitation; domicil. *Spelman.* The place which one has made his seat, (*sedes*;) abode or dwelling.\* A man's home. 15 *Mees. & W.* 433.

Residence imports not only *personal presence* in a place, but an attachment to it by those acts or habits which express the *closest connection* between a person and a place, as by usually *sitting* or *lying* there. The radical idea of the word is well illustrated by its use in English ecclesiastical law, to denote the actual and *settled* presence and abode of a parochial minister in and upon his parsonage house; otherwise expressed by the word *incumbency*, from *incumbere*, to lie upon. 1 *Bl. Com.* 390,

392. See 5 *Burr.* 2722. The same idea of *lying* was inherent in the old word *reseantisa*, (from the same root,) which imported a settled infirmity, ("a *resident infirmity*," as Skene translates it,) by which one was *confined to his house or bed*. See *Rescantisa*. And see 8 *Mod.* 308. *Burr. Sett. Cas. passim*. The radical idea of the pure Latin *residere* is a *sitting*. Hence justices while holding a court were said to be *resident* (*residentes*) or sitting there. See *Residens*.

*Residence* has been declared to mean the same thing with *inhabitancy*. *Burr. Sett. Cas.* 708. Walworth, C. 8 *Wendell's R.* 140. *Spelman* makes it synonymous with *habitation*, (*habitatio*.) It is made also synonymous with *domicil*, (*domicilium*;) by the same writer and other high authorities; but *domicil* in some of its applications imports something more than residence. 2 *Kent's Com.* 430, 431, note, 1 *Id.* 76, 77. It might be said that *residence* imported, *ex vi termini*, fixedness or permanence of location, were it not for the distinction between *permanent* and *temporary residence*, which seems to have become established. See 2 *Kent's Com. ub. sup.*

RESIDENS. [from *residere*, to sit.] In old English law. Sitting. *Justitiarum residentes in banco*; the justices sitting in the bench. *Bract.* fol. 353 b. These are distinguished from the *justitiarum itinerrantes in comitatu*; justices itinerating or going about in the county. *Id. ibid.*

RESIDENT. L. Lat. [from *residere*, to sit or be fixed.] In old English practice. [They] remain. *Quarum recorda et processus coram nobis resident*; the records and process whereof remain before us. *Reg. Orig.* 308 b.

RESIDENT. [Lat. *residens*, from *residere*, to sit; O. Eng. *resiant*.] One who has a seat or settlement in a place; one who dwells, abides or lies in a place.\* An inhabitant. 20 *Johns. R.* 208. Walworth, C. 8 *Wendell's R.* 134, 140. One who resides or dwells in a place for some time. *Webster*. See 12 *Grattan's R.* 440.

RESIDER. L. Fr. [from Lat. *residere*, q. v.] To continue; to abide. *L. Fr. Dict.*

RESIDERE. Lat. In old English law. To sit down; to sit still; to rest; to remain or continue. See *Resident*.

RESIDENT MINISTER. In international law. A public minister who resides

at a foreign court. Resident ministers are ranked in the third class of public ministers. *Wheaton's Intern. Law*, part 3, ch. 1, § 6. See 1 *Kent's Com.* 39, note.

**RESIDUARY.** Giving the residue, as a *residuary* clause.

Taking the residue, as a *residuary* devisee.

Constituting the residue, as a *residuary* estate. See *Residue*.

**RESIDUARY CLAUSE.** That clause in a will by which a testator disposes of such part of his estate as *remains* undisposed of by previous devises or bequests.\* 4 *Kent's Com.* 541, 542.

**RESIDUARY DEVISEE.** The person named in a will, who is to take all the real property remaining over and above the other devises.

**RESIDUARY ESTATE.** That part of a testator's estate and effects which *remains* after payment of debts and legacies.

**RESIDUARY LEGATEE.** The person to whom a testator bequeaths the residue of his personal estate, after the payment of such other legacies as are specifically mentioned in the will.

**RESIDUE, (or RESIDUUM.)** The surplus of a testator's estate remaining after all the debts and particular legacies have been discharged. 2 *Bl. Com.* 514.

**RESIGNATION.** In ecclesiastical law. The yielding up a benefice or spiritual living to the bishop. *Wharton's Lex.*

In Scotch law. The return of a fee into the hands of the superior. *Bell's Dict.*

**RESIGNATION BOND.** In English law. A bond given by the incumbent of a living, conditioned to resign on a certain contingency. *Smith on Contracts*, ¶76—181.

**RESILIRE.** Lat. In old English law. To draw back from a contract before it is made binding. Literally, to leap back, or start back. *Adhunc possunt partes resilire*; the parties may yet draw back. *Bract.* fol. 38. *Fleta*, lib. 2, c. 58, § 3. The Scotch law, with its accustomed closeness, renders this word *resile*.

**RESOLUCION.** Span. In Spanish colonial law. An opinion formed by some superior authority on matters referred to its decision, and forwarded to inferior authorities for their instruction and government. *Schmidt's Civ. Law*, 93, note 1.

**RESOLUTION.** In practice. The judgment of a court. 5 *Mod.* 438. 10 *Id.* 209.

**RESOLUTIVE.** In Scotch conveyancing. Having the quality or effect of resolving or extinguishing a right. *Bell's Dict.* voc. *Clauses irritant and resolute*.

**Resoluto jure concedentis, resolvitur jus concessum.** Where the right of the grantor is extinguished, the right granted is extinguished. *Broom's Max.* [352.]

**RESOMOUNSE.** L. Fr. Re-summons. *Britt.* c. 121.

**RESON.** L. Fr. Reason; truth; right; title; justice; act; argument; charge; expression; method; case; article; point. *Kelham.*

*De reson*; in reason. *Id.* *Funde sa reson*; grounds his title. *Id.* *Feare noz reson*; make us satisfaction. *Id.* *Deux resons*; two circumstances. *Id.* *Ses resons*; his evidences. *Id.*

**RESORT.** [from Fr. *resorter*, q. v.] To go back. "It resorted to the line of the mother." *Hale's Hist. Com. Law*, c. 11.

**RESORTER.** L. Fr. In old English law. To go back. *A force resortera le tenement au seignieur del fee*; the tenement must necessarily go back to the lord of the fee. *Britt.* c. 119.

To resort to; to adopt on failure of other proceedings. *Ne purra resorter à breve semblable*; he may not resort to a similar writ. *Id.* c. 46.

To go. *Dyer*, 135 b. (Fr. ed.)

**RESPECTARE, Respectuare.** L. Lat. In old English law. To respite. *Fortescue de L. L. Angliæ*, c. 53, note. *Reg. Orig.* 319. *Respectuabitur*; shall be put off. *Fleta*, lib. 6, c. 23, § 21.

**RESPECTIVE.** L. Lat. Respectively; with reference to the subject. "It must be taken *respective*." *Holt, C. J.* 1 *Show.* 190.

**RESPECTUS.** L. Lat. In old English and Scotch law. Respite; delay; continuance of time; postponement. *Ponere in respectum*; to put in respite; to respite or continue. *Glanv.* lib. 12, c. 9. *Fleta*, lib. 4, c. 5, § 11. *Habebit respectum, si velit, certæ diei*; shall have respite, if he will, to a certain day. *Reg. Maj.* lib. 4, c. 20. *Spelman.*

Time for payment. *Mag. Cart.* 9 *Hen.* III. c. 19.

**RESPI.** L. Fr. Delay; putting off. *Kelham.* *L. Fr. Dict.*

**RESPITE.** [L. Lat. *respectus, respectuatio*.] Delay; a putting off. The putting off the execution of a capital sentence; a reprieve. 4 *Bl. Com.* 394.

Continuance. In English practice, a jury is said, on the record, to be *respited* till the next term. 3 *Bl. Com.* 354.

RESPOIGNER, *Respoigner*. L. Fr. To answer. *Respoignable*; answerable. L. Fr. *Dict.*

RESPONDE BOOK. In Scotch practice. A book kept by the directors of chancery, in which are entered all non-entry and relief duties payable by heirs who take precepts from chancery. *Bell's Dict.*

RESPONDEAT OUSTER, (or QUOD RESPONDEAT OUSTER.) Lat. and L. Fr. In practice. The judgment for the plaintiff on a plea in abatement, *that* the defendant *answer over*; that is, answer in a better manner, or put in a more substantial plea. 3 *Bl. Com.* 303, 397.

Respondent superior. The superior or master must answer. Let the principal answer. The principal or master must answer, or is responsible for the acts of his agent or servant. 2 *Kent's Com.* 600. *Broom's Max.* 374, 387, [668.] *Fleta*, lib. 2, c. 70, § 14. *Story on Agency*, § 308, 452. Expressed in law French, *Respondera son souveraine*. *Artic. sup. Chart.* c. 18.

The rule of *respondent superior*, or that the master shall be civilly liable for the tortious acts of his servant, is of universal application, whether the act be one of omission or commission; whether negligent, fraudulent or deceitful. If it be done in the course of his employment, the master is liable; and it makes no difference that the master did not authorize or even know of the servant's act or neglect; or even if he disapproved or forbade it, he is equally liable, if the act be done in the course of his servant's employment. *Grier*, J. 14 *Howard's R.* 486. The rule applies to municipal corporations, when in the exercise of ministerial or executive powers. 3 *Comstock's R.* 463. 1 *Selden's R.* 369. 4 *Ohio St. R.* 80. As to its applicability in general, see 1 *Selden's R.* 49. 4 *Ohio St. R.* 399. 5 *Id.* 38, 41. Held not to apply so as to make a public officer responsible for the misconduct or malfeasance of such persons as he is obliged to employ. 3 *Hill's (N. Y.) R.* 531. And see *United States Digest*, Master and Servant.

RESPONDENT. [Lat. *respondens*, from *respondere*, to answer.] In practice. A party answering. A *respondent* in admi-

nistrality answers to a *defendant* at common law and in equity. A party against whom an appeal is taken.

RESPONDENTIA. Lat. [from *respondere*, to answer.] In mercantile law. A loan of money upon the pledge of the cargo of a vessel, to be repaid with maritime interest, if the subject arrives safe, or if it shall not have been injured except by its own defect, or the fault of the master or mariners.\* 3 *Kent's Com.* 354, 355. Called *respondentia*, because it is generally only a personal obligation on the borrower, who is bound to *answer* the contract. *Id. ibid.* 2 *Bl. Com.* 458. The contract is executed in the form of a bond, called a *respondentia bond*. 3 *Kent's Com.* 354. See *Abbott on Ship.* 150.

RESPONDES. L. Fr. Answer. *Respondes oustre*; answer over. Words of the court used in giving judgment. Of frequent occurrence in the Year Books. P. 3 Hen. VI. 13. T. 4 Hen. VI. 5, 11, *et passim*. M. 8 Hen. VI. 22. M. 20 Hen. VI. 23. *R'nd's*, *R'n's*, were contractions of the word. *Respondes à v' peril*. T. 1 Edw. II. 14.

RESPONSA PRUDENTUM. Lat. In the Roman law. Answers or opinions of lawyers, jurists or juriconsults. One of the principal sources of Roman jurisprudence. 1 *Kent's Com.* 530, 532. 1 *MacKeld. Civ. Law*, 23, § 34. *Id.* 31, § 43. Supposed to have partaken of the character of what are now called *precedents* or *reports*. *Butler's Co. Litt.* Note 253, lib. 3. *Tayl. Civ. Law*, 217, 218. See an example of a question and response, *Dig.* 28. 1. 27.

RESPONSALIS. L. Lat. In old English law. One who answered or gave answer for another, (*qui responsum deferet*.) The term seems to be used by Glanville in the sense of *attorney*. *Glanv.* lib. 12, c. 1. *Steph. Pl.* Appendix, Note (5.) But Bracton makes a clear distinction between the two offices, and is followed by *Fleta*. *Bract.* fol. 212 b. But see *Id.* fol. 361 b. *Fleta*, lib. 4, c. 6. Lord Coke defines *responsalis* to be "he that was appointed by the tenant or defendant, in case of extremity and necessity, to allege the cause of the party's absence, and to certify the court upon what trial he will put himself, viz. the combat or the country." *Co. Litt.* 128 a.

In the canon law. A proctor; one who excuses an absent party. *Cowell*.

**RESPONSIBLE.** Able to respond; Able to pay a sum for which a person may become liable. 6 *Foster's* (N. II.) *R.* 527.

**RESPONSIO.** Lat. An answer. *Responsio unius non omnino audiatur.* The answer of one witness shall not be heard at all. A maxim of the Roman law of evidence. 1 *Greenl. Ev.* § 260.

**RESPONSURUS.** Lat. In old practice. To answer. *Fleta*, lib. 2, c. 65, § 11. The same with *ad respondendum*, (q. v.)

**RESSEANT.** L. Fr. Continually abiding; resident. *Kelham.*

**RESSET.** In Scotch law. Receipt or harboring of a felon; concealment of felony. *Resset of theft*; concealment of theft. *Scott's Minstrelsy of Scottish Border*, Introd. App. viii. See *Reset*.

"**REST and RESIDUE,**" in a will, may in certain connections carry a fee; but the words attain their force from their juxtaposition with other words which fix the sense in which the testator has used them. Story, J. 10 *Wheaton's R.* 204, 235. See 1 *Jarman on Wills*, 658, 661, (567, 569, Perkins' ed.)

**RESTITUERE.** Lat. In the civil law. To restore. Distinguished from *exhibere*. *Dig.* 50. 16. 22. As to the construction of this word, see *Id.* 50. 16. 35, 75, 81, 246. *Id.* 50. 17. 173. 1.

**RESTITUTIO IN INTEGRUM.** Lat. In the civil law. Restitution to a former condition. *Dig.* 4. 1. The rescinding of a contract or transaction, on grounds of equity, and restoring the parties to the situation in which they were before the contract was made, or the transaction took place. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1150.

The restoration of a cause to its first state, on petition of the party who was cast, in order to have a second hearing. *Hallifax, Anal.* b. 3, c. 9, num. 49.

**RESTITUTION.** [Lat. *restitutio*, from *restituere*, to restore.] The yielding up again or restoring of any thing unlawfully taken from another. *Cowell.* The putting one in possession of lands or tenements who has been unlawfully dispossessed of them. *Id.* If after money has been levied under a writ of execution, the judgment be reversed by writ of error, or set aside, the party against whom the execution was sued out shall have restitution. 2 *Tidd's Pr.* 1033. 1 *Burr. Pr.* 292. So, on conviction

of a felon, immediate restitution of such of the goods stolen as are brought into court, will be ordered to be made to the several prosecutors. 4 *Steph. Com.* 434.

**RESTITUTION OF CONJUGAL RIGHTS.** In English ecclesiastical law. A species of matrimonial cause or suit which is brought whenever either a husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the ecclesiastical jurisdiction will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other. 3 *Bl. Com.* 94.

**RESTITUTION, Writ of.** In practice. A writ which lies, after the reversal of a judgment, to restore a party to all that he has lost by occasion of the judgment. 2 *Tidd's Pr.* 1186.

**RESTRAINING STATUTE.** A statute which restrains the common law, where it is too lax and luxuriant. 1 *Bl. Com.* 87. Statutes restraining the powers of corporations in regard to leases have been so called in England. 2 *Id.* 319, 320.

In some of the United States, statutes have been enacted, restraining the powers of banking corporations. See the New-York Restraining Act, 1 *Rev. St.* [711—713,] 707—711. *Cleveland on the Banking System*, 39—49.

**RESULTING TRUST.** A trust raised by implication, for the benefit of a party granting an estate.\* Thus, if the legal estate in land be conveyed to A. upon such trusts as the grantor shall thereafter appoint; as such trusts are, prior to appointment, incapable of taking effect, and as it is clear that A. is not intended to hold the land for his own benefit, there arises by necessary implication, until the appointment be made, a trust for the grantor. 1 *Steph. Com.* 346. 2 *Crabb's Real Prop.* 558, § 1777 a. *Cruise's Dig.* tit. xii. ch. 1, sec. 61.

Various kinds of trust are ranked under this head in the books, such as trusts raised by implication for the benefit of a person who advances the purchase money of an estate, &c. 1 *White's Equity Cases*, 138, and notes. 4 *Kent's Com.* 305, 306. *Cruise's Dig.* tit. xii. c. 1, sec. 40, *et seq.* But these are rather *implied* than resulting trusts, properly so called; the term *resulting*, in strictness, importing a *going back* or

reverting of an estate to the party from whom it proceeded. 2 *Crabb's Real Prop.* 571, § 1796.

**RESULTING USE.** A use which returns back to a party conveying an estate.\* Thus, if A. conveys by feoffment or lease and release to B. in fee, without consideration, and without declaring any use, there will be a *resulting use*, by implication of law, to himself, the grantor, which use the statute will execute accordingly. 1 *Steph. Com.* 498. 2 *Crabb's Real Prop.* 470, § 1641, *et seq.* In fact, no estate passes in such case from the grantor, but he remains seised as before. 1 *Hilliard's Real Prop.* 294, [297.]

**RE-SUMMONITIO.** L. Lat. [from *re-summonere*, to re-summon.] In old practice. A re-summons; a second summons, where the party did not appear on the first. *Fleta*, lib. 5, c. 3, § 2.

**RE-SUMMONS.** [L. Lat. *re-summonitio*.] In practice. A second summons. The calling a person a second time to answer an action, where the first summons is defeated upon any occasion, as the death of a party, or the like. *Cowell*.

**RESUMPTION.** [L. Lat. *resumptio*.] In old English law. The taking again into the king's hands such lands or tenements as before, upon false suggestion, or other error, he had delivered to the heir, or granted by letters patent to any man. *Stat.* 31 *Hen.* VI. c. 7. *Cowell*.

**RESYAUNT.** L. Fr. and O. Eng. Resident. "By people dwelling and *resyaunt* in the same counties." *Stat.* 8 *Hen.* VI. c. 7.

**RETAINER.** The retaining or keeping by an executor or administrator, out of the personal estate in his hands, of so much as will pay a debt due himself by the testator or intestate; a species of redress by operation of law.\* 3 *Bl. Com.* 18. If a person indebted to another makes his creditor or debtee his executor, or if such a creditor obtains letters of administration to his debtor; in these cases, the law gives him a remedy for his debt, by allowing him to *retain* so much as will pay himself, before any other creditors whose debts are of equal degree. *Id. ibid.* 2 *Id.* 511. 2 *Steph. Com.* 247. 3 *Id.* 378. 1 *Chitt. Gen. Pr.* 534, 668. 2 *Williams on Exec.* 894.

In New-York, executors or administrators cannot retain in preference to other debts of equal degree. 2 *Rev. St.* [88,] 29, § 33.

**RETAINER.** In practice. The engagement by a client, of an attorney, solicitor or counsel to act in his behalf; as to institute, or to defend a suit, to try a cause or the like. The special authority given by a client to an attorney or solicitor, to act in his behalf.\* This authority is rarely given in writing, though the propriety of written retainers has been contended for by high authority on such subjects. 2 *Chitt. Gen. Pr.* 18, 19. 3 *Id.* 115.

In English practice, a *retainer*, as applied to counsel, is commonly used to signify a notice given to a counsel by an attorney on behalf of the plaintiff or defendant in an action, in order to secure his services as advocate when the cause comes on for trial. *Holthouse*. See 2 *Chitt. Gen. Pr.* 71.

**RETAINING FEE.** [Lat. *merces retinens*.] In practice. A fee given to a counsel to secure his services, or rather, as it has been said, to prevent the opposite side from engaging them. *Brande*. The first fee given to any serjeant or counsellor at law, whereby to make him sure that he shall not be on the contrary part, (*honorarium seu premium causidici præcedaneum, quo clienti suo obligatur ne adversarii causam agat*.) *Cowell*.

**RETAILIA.** L. Lat. [from L. Fr. *retailier*, to cut again.] In old English law. Retail; the cutting up again, or division of a commodity into smaller parts. *Nec in grosso, nec ad retailiam*; neither in gross [by wholesale] nor at retail. *Reg. Orig.* 184.

**RETARE.** L. Lat. In old English law. To suspect; to accuse. *Retatus de murther*; accused of murder. *Assis. de Clarendon*, temp. *Hen.* II. § 1. *Spelman. De furto* *retatus*; charged with theft. *Cowell*. See *Rettatus*.

**RETEINER, Retener.** L. Fr. To retain, or keep back; to detain. *Kelham*.

**RETENEMENTUM.** In old English law. Restraint; detainment; withholding. A full and absolute conveyance was anciently made in this phrase,—*sine ullo retenemento*, (without any withholding.) *Cowell*.

**RETENTION.** The right of retaining property, until a debt due from the owner of such property to him who retains it, is paid. *Holthouse*. See *Lien*.

**RETONDERE.** L. Lat. In old English law. To clip. *Retonsus*; clipped. *De moneta retonsa*; respecting clipped money. *Fleta*, lib. 1, c. 20, § 128.

**RETONSOR.** L. Lat. [from *retondere*, q. v.] In old English law. A clipper of money. *Fleta*, lib. 1, c. 20, § 122.

**RETORNA BREVIUM.** L. Lat. In old practice. The returns of writs. The *retorna brevium* day was the third day of the term, so called, because the sheriff on that day returned his writs into court. *Crabb's Hist.* 218.

**RETORNARE, Returnare.** L. Lat. In old English practice. To return (a writ;) to return in execution of a writ. *Ad brevia falsum* retornant *responsum*; make a false return to the writs. *Stat. Westm.* c. 39. *Retornaverit*; shall have returned. *Fleta*, lib. 2, c. 64, § 20. *Retornasti*; you returned. *Id.* § 21. *Retornabile*; returnable. *Reg. Orig.* 276.

To return, or restore. *Retornari facias*; you cause to be returned. *Reg. Jud.* 4.

**RETORNUM.** L. Lat. In old practice. Return; a return. *Fleta*, lib. 2, c. 45, §§ 4, 7.

**RETOUNDER.** L. Fr. To clip (money.) *Ceux que averount nostre monoye* retoundu; those who have clipped our money. *Britt.* c. 4.

**RETOUR.** In Scotch law. To return a writ or brieve to the office in chancery from which it issued.\* *Hubback's Evid. of Succession*, 597. See *Retour of service*.

**RETOUR OF SERVICE.** In Scotch law. An authenticated copy of the verdict of a jury (called a *service*) taken under a brieve of succession, by which the legal character of a party as heir is judicially established.\* *Hubback's Evid. of Succession*, 597. 1 *Forbes' Inst.* part 3, p. 80. See *Bell's Dict.*

**RETRACTO O TANTEO.** Span. In Spanish law. The right of revoking a contract of sale; the right of redemption of a thing sold. *White's New Recop.* b. 2, tit. 13, c. 2, § 4.

**RETRACTUS AQUÆ.** L. Lat. In old English law. Retreat of the water.\* Ebb, or low water; the retreat of tide. *Placit. Cor. Rege*, Pasch. 30 Edw. I. *apud Cantuar.* Rot. 58. *Cowell.*

**RETRACTUS FEUDALIS.** L. Lat. In old Scotch law. The power which a superior possessed of paying off a debt due to an adjudging creditor, and taking a conveyance to the adjudication. *Bell's Dict.*

**RETRAHERE.** Lat. [from *re*, back, and *trahere*, to draw.] In old English practice. To draw back; to withdraw. *Si simpliciter se retrahat à brevi, non tamen*

*se retrahit ab actione,—nisi expresse dicat quod se retrahat ab utroque*; if he merely withdraw himself from the writ, he does not thereby withdraw himself from the action, unless he expressly says that he withdraws himself from both. *Bract.* fol. 182 b. See *Fleta*, lib. 4, c. 7, § 1.

**RETRAHO.** Lat. In old practice. I withdraw. *Sed quicumque et qualitercunque se retraxerit, simpliciter sive dicat retraho me de brevi isto, vel recedo, vel nolo amplius sequi, vel alio modo, impune non recedit*; but whoever he may be, and in whatever way he may have withdrawn himself, whether he simply say, "I withdraw myself from that writ," or "I retire," or "I will not further prosecute," or in any other way, he shall not withdraw with impunity. *Bract.* fol. 182 b. This passage exhibits the original form of the proceedings by *retraxit* and *nolle prosequi*. And see *Fleta*, lib. 4, c. 7, § 1.

**RETRAICTER, Retrair, Retreir, Retrere.** L. Fr. [from Lat. *retrahere*, q. v.] To draw back; to withdraw. *Kelham. L. Fr. Dict.*

**RETRAIT.** Fr. [from *retraire*, to draw back.] In old French and Canadian law. The taking back of a fief by the seignior, in case of alienation by the vassal. *Dunkin's Address*, 93.

A right of preëmption by the seignior, in case of sale of the land by the grantee. *Id.* 40.

**RETRAXIT.** L. Lat. [from *retrahere*, q. v.] In practice. (He withdrew, or has withdrawn.) An open and voluntary renunciation by a plaintiff, of his suit, in court, made when the trial is called on, by which he forever loses his action, or is barred from commencing another action for the same cause. 3 *Bl. Com.* 296. 2 *Arch. Pr.* 250. So called from the emphatic word of entry on the record, that the plaintiff *withdrew*, or *has withdrawn*. The words actually used by the plaintiff appear to have been "*retraho me*," (I withdraw myself,) or "*retraho me de brevi isto*," (I withdraw myself from this writ.) See *Retraho*. The proceeding by *retraxit* has, for the most part, become obsolete. See 17 *Georgia R.* 249.

**RETRERE, Retreir, Retreher.** L. Fr. To draw back. *Britt.* c. 120. *Yearb. M.* 3 Edw. III. 40.

**RETRET.** L. Fr. [from *retrere*, q. v.] Retreat; the drawing back or ebbing of water. *De un flot, et d' un retret d' la*

*meer*; of one flow or flood, and one ebb of the sea. *Britt. c. 123.* See *Retractus aque, Recessus maris.*

**RETRO.** Lat. Back; backward; behind. *Retrofodum*; a rere fief, or arriere fief. *Spelman.*

**RETROCOMITATUS.** L. Lat. [from *retro*, behind, and *comitatus*, county court.] In old English law. The morrow after the county court. *Fleta*, lib. 2, c. 67, § 18. Translated by Spelman, *rier county*, (q. v.)

**RETROSPECTIVE.** [from Lat. *retrospicere*, to look back, from *retro*, back, and *aspicere*, to look.] Looking back; contemplating what is past.

**RETROSPECTIVE LAW.** A law which retrospects or looks back; a law which contemplates or affects an act done, or a right accrued before its passage.\* Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, must be deemed *retrospective*. *Story, J. 2 Gallison's R. 139.* See 4 *Texas R. 470, 474—480.* See *Ex post facto.*

**RETROTRAHERE.** Lat. In civil and old English law. To draw back. *Retrotrahitur*; is drawn back; operates retrospectively; has relation back. *Retrotrahitur tempus*; the time relates back. *Fleta*, lib. 1, c. 28, § 4. See *Omnis rati habitio, &c.*

To recall or countermand. *Fleta*, lib. 2, c. 3, § 5.

**RETTARE, Retare.** L. Lat. [from L. Fr. *rette*, an accusation.] In old English law. To accuse; to charge with a crime. *Rettatus*; accused. *Reg. Orig. 68 b.* *Rettatus de morte.* *Id. 133 b.* See *Fortescue L. L. Angliæ, c. 27, note.*

**RETTE.** L. Fr. In old English law. An accusation or charge. *Quant clerk est prise par rette de felony*; when a clerk is taken on a charge of felony. *Stat. Westm. 1, c. 2.*

**RETTTER.** L. Fr. In old English law. To accuse; to charge; to lay to the charge; to account; in old English, to arret, or arrect. *Ceo purra il retter a ȝa negligence*; he must charge this to his own negligence. *Britt. c. 59.* *Ceo poies retter a vostre folly demesne*; you may lay this to your own folly. *Yearb. II. 10 Edw. III. 8.* *Il serra rette la folly*; it shall be accounted the folly. *Litt. sect. 261.*

**RETTUM.** L. Lat. [from L. Fr. *rette*,

q. v.] In old English law. An accusation; a charge. *Si clericus aliquis pro crimine aliquo vel retto—arrestatus fuerit*; if any clerk shall have been arrested for any crime or charge. *Stat. Marlbr. c. 28, [27.]* See *Fortescue de L. L. Angliæ, c. 27, note.* *Nisi capti sunt per speciale preceptum nostrum, vel capitalis justitiarum nostri, vel pro morte hominis, vel pro foresta nostra, vel pro aliquo alio retto quare secundum consuetudinem Angliæ non sunt replegiabiles*; unless they have been taken by our special command, or that of our chief justice, or for the death of man, or for our forest, or for any other charge wherefor, according to the custom of England, they are not repleviable. *Reg. Orig. 77 b.* *Dyer, 61.* The excepting clause in the old writ *de homine replegiando*. In Fitzherbert's *Natura Brevium*, the word *retto* in this passage is translated *right*. *F. N. B. 66 F.* And so in the English translation of *Dyer*.

**RETURN.** [L. Lat. *retornum, returnum, retornatio*; from L. Fr. *returner*, (q. v.) or *retour*, a turning back.] In practice. Strictly, the carrying or sending back of a writ to the court from which it issued, by the officer to whom it was directed, in compliance with its mandate to that effect; the sheriff being required to have the writ itself in court on a certain day.\* 3 *Bl. Com. 273, 275.* *Steph. Pl. 21.* The return, however, as actually made, is not to the court itself, but to the office of its clerk, which is considered as representing the court for this purpose.

The answer made in writing by a sheriff, or other officer, to the court out of which a writ directed to him has been issued, stating what he has done in execution of it, or how he has executed it; called by the civilians, *certificatorium*. This answer is endorsed on the writ in a certain prescribed form, and is thus remitted or sent back with it to the court.\* *Id. ibid.*

The day in term on which sheriffs are required to bring in their writs, and report how far they have obeyed them. 3 *Bl. Com. 275, 277.* *Spelman, voc. Retorna.* Otherwise called the *return day*, (q. v.)

To RETURN. [L. Fr. *returner*; L. Lat. *retornare, returnare, mittere.*] In practice. To remit or send back a writ to the court out of which it issued, with a memorandum or certificate endorsed, of the manner in which it has been executed.\* “What-ever the sheriff does in pursuance of the

writ, he must *return* or certify to the court, together with the writ itself." 3 *Bl. Com.* 273.

**RETURN DAY.** In practice. The day on which a writ is appointed or required to be returned. *Return days* are certain stated or fixed days in term on which writs are returnable.\* 3 *Bl. Com.* 277. In modern practice, the use of fixed return days has been, to a considerable extent, dispensed with. See *Stat. 2 Will. IV. c. 39.*

**RETURNABLE.** In practice. To be returned; appointed or required to be returned.\* 3 *Bl. Com.* 277.

**RETURNARE.** L. Lat. In old English practice. To return; to re-deliver. *Returnabit domino averia capta*; he shall return to the lord the beasts taken. *Bract. fol. 156.* *Returnari facias*; you cause to be returned. *Reg. Jud.* 61 b.

**RETURNER.** L. Fr. To return. *Si le visconte retourne que el defendaut soit clerke*; if the sheriff return that the defendant is a clerk. *Britt. c. 26.*

**RETURNUM, Retornum.** L. Lat. In old practice. Return; a return. *Returnum brevium*; return of writs. *Fleta, lib. 1, c. 19, § 4.*

*Returnum* (or *retornum*) *irreplegiabile*; return irreplevisable. A final return of goods or chattels, admitting of no replevin.\* The name of a writ which issued for a defendant in replevin, where he had judgment on verdict or demurrer, or where the plaintiff, after obtaining a writ of second deliverance, was non-suited a second time. 3 *Bl. Com.* 150. *Reg. Jud.* 27.

**REUS.** [from *res*, a thing, matter, suit.] In the civil and canon law. A person from whom some thing is demanded by suit; a person complained of by suit; a person judicially called upon to make satisfaction for an injury; a person sued; a defendant. *Calv. Lex. Bract. fol. 106, 106 b. Fleta, lib. 2, c. 61, § 2.* 3 *Bl. Com.* 25. 4 *Reeves' Hist.* 11. *Favorabiliores rei potius quam actores habentur.* Defendants are regarded more favorably than plaintiffs. *Dig.* 50. 17. 125. *Reus excipiendo fit actor.* The defendant, by excepting or pleading, becomes a plaintiff; that is, where, instead of simply denying the plaintiff's action, he sets up some new matter in defence, he is bound to establish it by proof, just as a plaintiff is bound to prove his cause of action. *Bouvier Tr. des Preuves, §§ 152, 320. Best on Evid. 294, § 252.*

A person judicially accused of a crime; a person criminally proceeded against. *Hallifax, Anal. b. 3, c. 13, num. 7.*

A party to a suit, whether plaintiff or defendant; a litigant. This was the ancient sense of the word. *Calv. Lex. Heinecc. Elem. Jur. Civ. lib. 3, tit. 16, § 841.*

A party to a contract. *Reus stipulandi*; a party stipulating, (*qui stipulatur*;) the party who asked the question in the form prescribed for stipulations. *Reus promittendi*; a party promising, (*qui promittit*;) the party who answered the question. *Inst. 3. 16. Dig. 45. 2. 1. Hallifax, Anal. b. 2, c. 16, num. 3. Reus credendi*; the party crediting; a creditor. *Reus debendi*; the party owing; a debtor. *Id. ibid. Calv. Lex. Prateus.*

**REVE, or GREVE.** [Lat. *gerefa*, or *refa*, from *ræfan*, to seize.] In English law. A chief officer or superintendent, (*præpositus, præfectus.*) Properly, according to Spelman, a collector or exactor of public monies or fines.

*Shire-reve*; the reve or chief officer of the shire, (*pagi præpositus.*) Hence sheriff.

*Tun-greve*; the reve or chief officer of a town, (*villæ præpositus.*) Afterwards simply called *reve*, and bailiff. *Spelman. See Reeve.*

**REVE LAND.** In Saxon law. Land over which the *shire-reve*, or sheriff, had jurisdiction. 1 *Reeves' Hist. Eng. Law, 5.* This word occurs in Domesday Book, and is explained by Lord Coke to be "land held by socage." *Co. Litt. 86 a.* It is otherwise explained to be, land left in charge of the *reve* or bailiff of a manor. *Cowell.*

**REVE MOTE.** In Saxon law. The court of the *reve*, *reeve*, or *shire-reeve*. 1 *Reeves' Hist. Eng. Law, 6.*

**REVENDECATION.** In the civil law. The right of a vendor to reclaim goods sold, out of the possession of the purchaser, where the price was not paid. *Story's Conf. Laws, § 401. Wharton's Lex.*

**REVENIR, Revener.** L. Fr. To come back; to return. *Kelham. L. Fr. Dict.*

**REVENUE.** L. Fr. and Eng. [from *revenir*, q. v.] That which returns, or is returned; a rent, (*reditus.*) Income; annual profit received from lands or other property.\* *Cowell.*

**REVERA.** Lat. In truth; in fact. *Fleta, lib. 2, c. 60, § 21.*

To **REVERSE.** To turn back; to act

in an opposite direction; to undo or annul, on the ground of error.

**REVERSER.** In Scotch law. The proprietor of an estate who grants a wadset (or mortgage) of his lands, and who has a right, on repayment of the money advanced to him, to be replaced in his right. *Bell's Dict.*

**REVERSIO.** L. Lat. [from *reverti*, to return.] In old English law. The returning of land to the donor. *Fleta*, lib. 3, cc. 10, 12.

**REVERSION.** [Lat. *reversio*, from *reverti*, to return.] Literally, a returning; or that which returns.\* The returning of land into the possession of the donor, or his heirs, after the gift is ended. *Co. Litt.* 142 b.—The residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 *Bl. Com.* 175. Thus, where a lease for life or years is made by a person seised in fee, the reversion or residue of the fee continues in the lessor, and on the expiration of the lease, the possession returns to him.\*

Mr. Stephen, in his *New Commentaries*, substitutes in place of Blackstone's definition, the following: "An estate in *reversion* is where any estate is derived, by grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived; the latter interest is called the *particular estate*, (as being only a small part or *particula* of the original one,) and the ulterior interest, the *reversion*." 1 *Steph. Com.* 290.—The Revised Statutes of New-York have defined a reversion to be "the residue of an estate left in the grantor, or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised." 1 *Rev. St.* [723,] 718, § 12. Perhaps the briefest definition, consistent with retaining the radical idea of the word, is,—"*a return of an estate to the original or general owner, or his heirs, after a limited or less estate carved out of it, and conveyed by him, has determined.*" See 4 *Kent's Com.* 354.

**REVERSIONARY INTEREST.** The interest which a person has in the reversion of lands or other property. A right to the future enjoyment of property, at present in the possession or occupation of another. *Holthouse.* See *Reversion*.

**REVERSIONER.** A person having the

reversion of an estate; a person entitled to a reversion. See 2 *Bl. Com.* 176.

**REVERTER.** L. Fr. and Eng. The reverting or going back of lands to a donor, his heirs or assigns.\* 3 *Bl. Com.* 192. See *Formedon in the reverter*.

**REVERTI.** Lat. In old English law. To return. *Fleta*, lib. 3, c. 10, § 1.

**REVEST.** To vest again. A seisin is said to *re-vest*, where it is acquired a second time by the party out of whom it has been divested. 1 *Roper's Husb. & Wife*, 353.

**REVESTIRE.** L. Lat. In old European law. To return or resign an investiture, seisin or possession that has been received; to re-invest; to re-enclose. *Spelman*.

**REVIEW, Bill of.** In equity practice. A bill, in the nature of a writ of error, filed to procure an examination and alteration or reversal of a decree made upon a former bill, which decree has been signed and enrolled. *Story's Eq. Pl.* § 403.

**REVIEW, Commission of.** In English ecclesiastical law. A commission formerly sometimes granted, in extraordinary cases, to revise the sentence of the court of delegates, when it was apprehended they had been led into a material error. 3 *Bl. Com.* 67.

**REVISING BARRISTERS.** In English law. Barristers appointed to revise the lists of voters for county and borough members of parliament, and who hold courts for that purpose in the autumn throughout the country. *Wharton's Lex.*

**REVIVOR, Bill of.** In equity practice. A bill filed to revive and continue the proceedings, whenever there is an abatement of a suit, before its final consummation, by the death or marriage of one of the original parties.\* *Story's Eq. Pl.* 354.

**REVOCATION.** [Lat. *revocatio*, from *revocare*, to call back.] The calling back of a thing granted or act done, thereby annulling it, or putting an end to its legal effect. The most important applications of this word are to testamentary dispositions, to agencies and powers; but it is also sometimes applied in practice, as to judges' orders, &c. See *Revoke*. As to the revocation of a will, see 1 *Jarman on Wills*, 106—173, (150—205, Perkins' ed. 1859.) 4 *Kent's Com.* 520—534.

**REVOKE.** [from Lat. *revocare*, from *re*, again, and *vocare*, to call.] To call back; to recall; to annul an act by calling or

taking it back. The word is properly expressive of the voluntary act of a party in matters within his discretion.

**REWARD.** [Lat. *præmium, merces.*] Compensation or remuneration for services. Frequently used in law, in connection with the word *fee*.

A sum of money paid or taken for doing or forbearing to do some act.

**REWME.** O. Eng. [from L. Fr. *reaume.*] In old records. Realm; kingdom. "In the name of Fader, Son and Holy Ghost, I, Henry of Lancaster, chalenge this *rewme* of Ynglonde and the croun, with all the members and the appurtenances, als I that am descendit be right line of the blode comyng fro the gude Lord King Henry therde, and thorgho that right that God, of his grace, hath sent mee, with helpe of my kyn and of my frendes to recover it; the which *rewme* was in poynt to be ondone for default of governance and undoyng of the gude laws." Claim of Henry, Duke of Lancaster, (afterwards Henry IV.) to the crown of England. 1 *State Trials*, 152.

**REX.** Lat. In old English law. King; a king; the king. *Rex debet esse sub lege, quia lex facit regem*; the king ought to be under the law, because the law makes the king. 1 *Bl. Com.* 239.

**Rex non potest peccare.** The king cannot do wrong; the king can do no wrong. 2 *Roll. R.* 304. An ancient and fundamental principle of the English Constitution. *Jenk. Cent.* 9, case 16. *Id.* 308, case 84. 1 *Bl. Com.* 246. This maxim is explained by Blackstone to mean, first, that whatever is exceptionable in the conduct of public affairs, is not to be imputed to the king, nor is he answerable personally for it to his people; and secondly, that the prerogative of the crown extends not to do any injury; it is created for the benefit of the people, and therefore cannot be exerted to their prejudice. *Id. ibid.* And see a more detailed explanation in *Broom's Maxims*, 23—26, [40—45.]

**Rex nunquam moritur.** The king never dies. *Broom's Max.* 22. The law of England ascribes to the king, in his political capacity, an absolute immortality; and immediately upon the decease of the reigning prince, in his natural capacity, the kingly dignity and the prerogatives and political capacities of the supreme magistrate, by act of law, without any interregnum or interval, vest at once in his successor, who is,

*eo instante*, king, to all intents and purposes. 1 *Bl. Com.* 249.

**RIIODIAN LAW.** [Lat. *Lex Rhodia.*] A code of maritime law, established and promulgated by the Rhodians, or inhabitants of the Island of Rhodes, and the oldest collection of the kind now known. Only some fragments of it, however, have been preserved, which are contained in a single title of the Pandects. *Dig.* 14, 2; *De lege Rhodia de Jactu.* 3 *Kent's Com.* 3, 4.

A collection of laws, published in 1561 and 1596, under the title of *Rhodian laws*, has been recognised by some eminent jurists as the ancient Rhodian laws, but pronounced by others to be spurious. 3 *Kent's Com.* 4, and note. The correct opinion, probably, on this point, is that of M. Pardessus,—that it is a genuine compilation, but of comparatively modern date, being a collection of the laws and usages which prevailed in the Mediterranean during the middle ages. *Lois Mar.* tom. i. 336. 3 *Kent's Com. ub. sup.*

**RIBALDUS.** L. Lat. [from Fr. *ribauld, ribaud.*] In old European law. A worthless person; a vagabond; a rogue or ruffian. *Spelman.* It was not always, however, used in a bad sense, but sometimes denoted an inferior attendant or servant. *Id.*

**RIBAUD, Rybaud.** L. Fr. A vile or worthless person; a vagabond; a ruffian. *Britt.* c. 25.

**RICOHME.** Span. In Spanish law. A nobleman; a count or baron. *White's New Recop.* b. 1, tit. 5, c. 3, § 4.

**RIDER.** A separate piece of parchment tacked to a bill in parliament, containing a new clause added after the bill has been read a third time.\* 1 *Bl. Com.* 183. It seems to have been also spelled *ridder*.

**RIDER (or RIDDER) ROLL.** In old English practice. A schedule or small piece of parchment added to some part of a roll or record. *Cowell. Blount.* A supplementary roll. 2 *Tidd's Pr.* 730.

**RIDING.** A division of the county of York in England, of which there are three; the East Riding, North Riding and West Riding. Considered to be a corruption of *trithing*, (q. v.) 3 *Bl. Com.* 116.

**RIEN CULP.** L. Fr. In old pleading. Not guilty. *Yearb.* H. 9 Hen. VI. 16. M. 10 Hen. VI. 53.

**RIEN DIT.** L. Fr. In old pleading. Says nothing, (*nil dicit.*) *Yearb.* M. 8 Hen. VI. 16.

RIEN LUY DOIT. L. Fr. In old pleading. Owes him nothing. The plea of *nil debet*. Yearb. M. 3 Hen. VI. 16.

RIENS, *Rien, Rycn*. L. Fr. Nothing. Litt. sect. 53.

RIENS EN ARRERE. L. Fr. Nothing in arrear. A plea in an action of debt for arrearages of account. Cowell.

A plea in an action of debt for rent. 1 Tidd's Pr. 650. Roscoe's Real Act. 475.

A plea to an avowry in replevin. Id. 638. 2 Greenl. Ev. § 566. A quasi general issue. 2 Selden's R. 141.

RIENS LOUR DEUST. L. Fr. Not their debt. An old form of the plea of *nil debet*. 2 Reeves' Hist. 332. •

RIENS PASSA PER LE FAIT. L. Fr. Nothing passed by the deed. A plea by which a party might avoid the operation of a deed, which had been enrolled or acknowledged in court; the plea of *non est factum* not being allowed in such case. Yearb. 9 Hen. VI. 60. 1 Gilb. Evid. 145. See 2 Hilliard's Real Prop. 399, [422.]

RIENS PER DISCENT. L. Fr. Nothing by descent. The plea of an heir, where he is sued for his ancestor's debt, and has no land from him by descent, or assets in his hands. Cro. Car. 151. 1 Tidd's Pr. 645. 2 Id. 937.

RIER COUNTY. [L. Lat. *retrocomitatus*, q. v.] In old English law. After-county; i. e. after the end of the county court. A time and place appointed by the sheriff for the receipt of the king's money after the end of his county, or county court. Cowell. Fleta (lib. 2, c. 67,) calls it the day after the county, (*dies crastinus post comitatum*.) It is opposed to *open county*, (that is, open county court,) in the statute 2 Edw. III. c. 5.

RIFLETUM. L. Lat. In old records. A coppice or thicket. Cowell.

RIFFLURA, *Rufflura, Ruflura*. L. Lat. [from O. Eng. *rufflyn*, to disorder.] In old English criminal law. A slight removal of the skin; a scratch, (*scarificatio, decortatio*.) Bract. fol. 144, 145. Fleta, lib. 1, c. 41, § 3. Spelman.

RIGA. L. Lat. In old European law. A species of service and tribute rendered to their lords by agricultural tenants. Supposed by Spelman to be derived from the name of a certain portion of land, called in England a *rig* or *ridge*, an elevated piece of ground, formed out of several furrows.

RIGHT. [Sax. *riht*, Germ. *riecht*, L. Fr. *droit, droict, dreit, dreyt*; from Lat. *rectus, rectum*, straight, upright; Lat. *jus*.] Justice; equity. This seems to have been the sense of the word in the old writ of right; the person to whom it was directed being commanded to "do full right (*plenum rectum teneatis*) to the demandant," "that we may hear no more clamor thereupon for want of right," (*pro defectu recti*.) Reg. Orig. 1. The word *jus*, it will be seen, is not used. See Writ of right.

That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense, right has the force of *claim*, and is properly expressed by the Latin *jus*. Lord Coke considers this to be the proper signification of the word, especially in writs and pleadings, where an *estate is turned to a right*, as by discontinuance, disseisin, &c. Co. Litt. 345 a.

That interest which a person actually has in any subject of property, entitling him to hold or convey it at pleasure.\* An estate *in esse* in conveyances. Co. Litt. 345 a. In this sense, right (*jus*) has the force of *ownership* or *property*. Lord Coke, comparing the terms *right* and *title*, observes that "*title* is the more general word, for every right is a title, but every title is not such a right for which an action lies." Co. Litt. 345 b. Sir Matthew Hale distinguishes between the *right* of an estate and the *title* of an estate. Hale's Anal. sect. xxxii.

That which a person, having it, is entitled to keep and enjoy, and to be protected by law in its enjoyment; as the right of personal liberty, and other rights of persons. See 1 Bl. Com. 129.

An interest in a thing; a claim to hold or use it; or to have some benefit in or from it.

RIGHT. [L. Lat. *rettum*, q. v.] In old English law. An accusation or charge of crime. F. N. B. 66 F.

RIGHT AND TITLE. A devise by a testator of "all my right" will carry an estate of inheritance, if there be nothing in the other parts of the will to limit or control the operation of the words. 4 Kent's Com. 535. A devise of freehold lands, with "all right and title" to the same, carries the fee. 4 Moore & P. 445. 2 Jarman on Wills, 192, (141, Perkins' ed.)

RIGHT OF POSSESSION, [L. Lat. *jus possessionis*,] considered separately

from the actual possession of lands, is the right of a person disseised or kept out of possession by another, to recover the possession by action. United with possession, it is considered by Blackstone the second step to a good and perfect title. 2 *Bl. Com.* 196.

**RIGHT OF PROPERTY.** [Lat. *jus proprietatis*.] The mere right of property in land; the abstract right which remains to the owner after he has lost the right of possession, and to recover which the writ of right was given. See 2 *Bl. Com.* 197—199. United with possession, and the right of possession, this right constitutes a complete title to lands, tenements and hereditaments. *Id. ibid.*

**RIGHT OF SEARCH.** See *Search*, *Right of*.

**RIGHT OF WAY.** See *Way*.

**RIGHT TO BEGIN.** [Lat. *ordo incipiendi*.] In English practice. The right to open a case, or the evidence in a case, at the trial. So far as the *pleadings* are concerned, the right to begin is always the plaintiff's, as the *pleadings* are always opened by him or his counsel, and never by the defendant. And in regard to the *proofs*, the plaintiff also has, in most cases, the right to begin, even where the affirmative of the issue is, in point of form, with the defendant. See *Best on Evid.* 474—478, §§ 433—435. See 5 *Ad. & Ell.* (N. S.) 447. 9 *Grattan's R.* 16. *United States Digest*, Trial.

**RIGHT.** [Lat. *rectus*.] Direct; upright; as the *right* line of descent. See *Linea recta*.

Lawful; proper; true; as *right* heirs, (Fr. *droits heirs et vrayes*.) *Britt.* c. 119.

Legal, as distinguished from equitable. See *Dominium directum*.

**RIGHTS OF PERSONS.** [Lat. *jura personarum*.] Rights which concern and are annexed to the *persons* of men. 1 *Bl. Com.* 122.

**RIGHTS OF THINGS.** [Lat. *jura rerum*.] Rights which may be acquired over external objects or things unconnected with the person.\* 1 *Bl. Com.* 122.

**RIGOR JURIS.** L. Lat. Strictness of law. *Latch*, 150. Distinguished from *gratia curiæ*; favor of the court. *Id.*

**RINGA.** L. Lat. In old English law. A belt, or girdle; a sword-belt. *Bract.* fol. 5 b. *Spelman*.

**RINGS, GIVING.** In English practice. A custom observed by serjeants at

law, on being called to that degree or order. The rings are given to the judges, and bear certain mottoes according to the fancy of the giver. See the English reports, *passim*. This is a relic of the very imposing ceremonies once connected with the assumption of the degree, which are detailed with great minuteness in some of the old reports. See *Serjeant at law*. The giving of rings was formerly a very considerable item in the expenses incurred on such occasions, every newly created serjeant being required to make presents of gold rings to the value, in the whole, of forty pounds at the least, English money, or nearly 200*l.* in modern currency. *Fortescue de L. L. Angliæ*, c. 50, and note. "I very well remember," observes Sir John Fortescue, "when I took upon me the state and degree of a serjeant at law, that my bill for gold rings came to fifty pounds." *Id. ibid.*

**RIOT.** [L. Lat. *riota*, *riottum*, from Fr. *riotte*, a brawl, or a band by which things are tied in bundles.] In criminal law. The forcible or violent doing of an act against the peace, by three or more persons assembled together for that purpose.\* *Cowell*. —The assembling of three or more persons against the public peace, and their unlawful action thereupon. *Spelman*. A riot, being usually the act of large numbers of persons, is otherwise described as "a tumultuous disturbance of the peace by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." 4 *Steph. Com.* 278. 1 *Russell on Crimes*, 266, (Am. ed. 1850,) and notes. *Wharton's Am. Crim. Law*, § 2474, *et seq.* *Id.* §§ 2456—2472.

**RIOTOSE.** L. Lat. Riotously. A formal and essential word in old indictments for riots. 2 *Stra.* 834. *Riotosè et routosè*; riotously and routously. 2 *Salk.* 593.

**RIOTOUS ASSEMBLY.** In English criminal law. The unlawful assembling of twelve persons or more, to the disturbance of the peace, and not dispersing upon proclamation. 4 *Bl. Com.* 142. 4 *Steph. Com.* 273.

**RIOTOUSLY.** In criminal pleading. A technical word properly used in an indictment for a riot, and *ex vi termini* implying violence. 2 *Chitt. Crim. Law*, 488, 490, note (f). 2 *Sess. Cas.* 13, cited *ibid.* In the English forms, "riotously and routously" is the expression invariably used. 2 *Chitt. C. L. ub. sup.* 3 *Burr.* 1262. And this has been adopted in American practice. *Wharton's Prec. of Indict.* 849, *et seq.* (ed. 1857.)

**RIPA.** Lat. In the civil law. The bank of a river; that which contains or encloses a river at its fullest height, (*ea quæ plenissimum flumen continet.*) *Dig.* 43. 12. 3. 1. That which contains the river, holding the natural force of its current, (*id quod flumen continet. naturalem rigorem cursus sui tenens.*) *Id.* 43. 12. 1. 5. *Riparum usus publicus est jure gentium, sicut ipsius fluminis;* by the law of nations, the use of a river's banks is as public as that of the river itself. *Inst.* 2. 1. 4. *Dig.* 1. 8. 5, pr. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 5. *Loccen. de Jur. Mar.* lib. 1, c. 6, § 12.

The bank, side or border of a port; a wharf. *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 6.

**RIPARIA, Rivaria.** L. Lat. In old English law. A river. *Nec villa nec homo distringatur facere pontes ad riparias nisi qui ex antiquo et de jure facere debet.* *Nulla riparia de cetero defendatur, &c.*; nor shall a vill nor a man be distrained to make bridges at rivers, unless one who ought to do it according to custom and law. No river shall henceforth be defended, &c. *Mag. Cart.* 9 Hen. III. cc. 15, 16. *Pontes ad riparias.* *Id. Johan.* c. 23. *De ripariis quæ posita sunt in defenso;* concerning rivers which are put in defence. *Id.* c. 47. And see *Stat. Westm.* 2, c. 48. 2 *Inst.* 478. *Hale de Jur. Mar.* pars 1, c. 2.

**RIPARIAN.** [Lat. *riparius*, from *ripa*, a bank.] Belonging or relating to the bank of a river; of or on the bank.

**RIPARIAN OWNER or PROPRIETOR.** The owner or proprietor of land on the bank of a river or stream.\* 3 *Kent's Com.* 427—432. See 2 *Selden's R.* 522.

**RIPARIAN RIGHTS.** The rights of the owners of lands on the banks of rivers and streams. 3 *Kent's Com.* 427—432.

**RIPATICUM.** L. Lat. [from *ripa*, a bank.] In old European law. A revenue derived from the banks of rivers. *Feud.*

*Lib.* 2, tit. 56. *Loccen. de Jur. Mar.* lib. 1, c. 6, § 13.

**RIPE.** L. Fr. [Lat. *ripa.*] Bank; a bank. *Dyer*, 33, (Fr. ed.)

**RIPUARIAN LAW.** [Lat. *Lex Ripuariorum.*] An ancient code of laws by which the Ripuarii, a tribe of Franks who occupied the country upon the Rhine, the Meuse and the Scheldt, were governed. They were first reduced to writing by Theodoric, king of Austrasia, and completed by Dagobert. *Spelman*, voc. *Lex Ripuariorum.* *Esprit des Loix*, liv. 28, c. 1. *Butler's Co. Litt.* Note, 77, to lib. 3. *Butler's Hor. Jur.* 84. According to *Spelman*, many of the provisions of this code were copied into the laws of Henry I. of England.

**RISCUS.** L. Lat. In the civil law. A chest for the keeping of clothing. *Calv. Lex.*

In old pleading. A trunk. *Cro. Jac.* 664.

**RISICUM.** L. Lat. In old insurance law. Risk; hazard; peril. *Straccha*, *Gloss.* 16. *Emerig. Tr. des Ass.* ch. 12.

**RISK.** [Fr. *risque*; L. Lat. *risicum*; Lat. *periculum.*] In insurance law. A peril, hazard, or danger; an adventure; a chance of loss. See 1 *Marshall on Ins.* 214, *et seq.* 3 *Kent's Com.* 253, 291.

**RISTOURNE.** Fr. In insurance law. The dissolution of a policy or contract of insurance, for any cause. *Emerig. Tr. des Ass.* ch. 16.

**RITE.** Lat. In due form. "The rule of presumption is *ut res ritè acta est,*" (that a thing is done in due form.) Lord Ellenborough, 8 *East*, 248. See *Omnia præsumantur rite, &c.*

**RIVAGE.** Fr. In French maritime law. Shore; the shore of the sea. *Ord. Mar.* liv. 4, tit. 7.

**RIVARIA.** L. Lat. In old English law. A river. *De forestis et rivariis.* *Artic. Mag. Cart. Johan.* c. 39.

**RIVER.** [Lat. *flumen.*] A body of running water confined between two opposite sides or banks, (*ripæ*)\* A running stream, pent in on either side with walls and banks. *Callis on Sewers*, [77,] 95. *Woolrych on Sewers*, 51. A water-course of the larger kind. See *Angell on Water-Courses*, § 3, and note. A river consists of water, bed and banks. See 13 *Howard's R.* 381, 415. See 3 *Rob. Adm. R.* 341. 3 *Grattan's R.* 655.

**RIVERA.** L. Lat. In old European law. A river. *Spelman.*

**RIVIATION.** In old English law. The use of a river for the purposes of fishing, &c. *Hale de Jur. Mar.* pars 1, c. 2.

**RIVUS.** Lat. In the civil law. A trench for water to pass. Defined by Ulpian, a place sunk for a distance along, where water may run, (*locus per longitudinem depressus quo aqua decurrat.*) *Dig.* 43. 21. 1. 2. Derived by the same writer from the Gr. *ῥέω*, to flow.

In old English law. The channel of a water-course. *Bract.* fol. 233. *Fleta*, lib. 4, c. 27, § 10. Both these writers adopt the definition of the Digests, (*supra*), word for word.

**RIXA.** Lat. In the civil law. A quarrel; a strife of words, (*verbosa contentio.*) *Calv. Lex.*

**RIXATRIX.** L. Lat. In old English law. A scold; a scolding or quarrelsome woman. 4 *Bl. Com.* 168. 6 *Mod.* 11, 239.

**R'NA.** A contraction of *Regina*, (queen.) 1 *Inst. Cl.* 12.

**R'NS.** A contraction of *Respondes*, (answer.) *Yearb.* II. 3 Hen. VI. 32.

**ROAD.** [Fr. *rade*.] In maritime law. An open passage of the sea, that receives its denomination commonly from some part adjacent; which, though it lie out at sea, yet, in respect of the situation of the land adjacent, and the depth and wideness of the place, is a safe place for the common riding or anchoring of ships, as Dover Road, Kirkley Road, &c. *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 2.

**ROADSTED.** In maritime law. A known general station for ships, (*statio tutissima nautis*), notoriously used as such, and distinguished by the name; and not any spot where an anchor will find bottom and fix itself. Sir Wm. Scott, (*The Rebekah*), 1 *Rob. Adm. R.* 232.

**ROBA, Rauba.** Ital. and Lat. In old English law. A garment; a robe. *Spelman.* *Unam robam de viridi*; one robe of green. *Bract.* fol. 146.

**ROBARIA.** L. Lat. [from *roba*, a robe or garment.] In old English law. Robbery. In its original sense, the violent taking of one's robe, (*roba*) or garment. *Spelman.* Bracton writes the word *roberia*, (q. v.) *Fleta*, *robberia*, (q. v.)

**ROBATOR.** L. Lat. [from *roba*, a robe.] In old English law. A robber. *Robatores*; robbers. *Hoveden*, part. post. in *Ric.* I. A. D. 1198. Sturdy thieves, who falling upon the persons of men, plunder them of their goods (*latrones validi, qui in personas*

*hominum insilientes, bona sua diripiunt.*) *Spelman.* So called originally, because they spoiled travellers of their robes, or garments. *Id.* Bracton writes the word *robbator*, (q. v.)

**ROBBARE.** L. Lat. In old English law. To rob; to take away violently. *Docere oportet quod de custodia sua robbata fuerit*; he ought to show that it was robbed out of his custody. *Bract.* fol. 146. *Fleta*, lib. 1, c. 39, § 3.

**ROBBATOR.** L. Lat. [from *robbare*, q. v.] In old English law. A robber. *Robatores et burglatores*; robbers and burglars. *Bract.* fol. 115 b. *Fleta*, lib. 2, c. 52, § 9.

**ROBBER.** L. Fr. To rob. *Robbe*; robbed. *Emble ou robbe*; stolen or robbed. *Britt.* c. 4. *Robbans*; robbing. *Id.* c. 15.

**ROBBERIA.** L. Lat. In old English law. Robbery. *Fleta*, lib. 1, c. 39.

**ROBBERY.** [L. Fr. *robberie*; L. Lat. *robaria, roberia, robberia*, (qq. v.); Lat. *rapina*.] In criminal law. A felonious taking away of a man's goods from his person. *Co. Litt.* 288 a.—The felonious and forcible taking from the person of another, of goods or money, to any value, by violence or putting him in fear. 4 *Bl. Com.* 242.—A felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence, or putting him in fear. 1 *Russell on Crimes*, 867. *Wharton's Am. Crim. Law*, § 1695—1704.

\* \* This word is a slight variation from the Fr. *robberie*, (probably its immediate origin,) and is derived by *Spelman* (through its L. Lat. form, *robaria*, or *roberia*), from *roba*, or *rauba*, a robe or garment. *Robatores*, (robbers,) he observes, were originally so called because they spoiled travellers of their robes, or garments, (*primo sic dicti quod viatores robis seu raubis, i. vestibus spoliarent*), from which circumstance, robbery of this kind is at this day called by the Germans *raub*, and to rob, *rauben*. *Spelman*, voc. *Robaria*. Lord Coke substantially adopts the same derivation, although he applies it differently; robbery is so called, "because the goods are taken, as it were, *de la robe*, from the robe, that is, from the person." *Co. Litt.* 288 a. This derivation is not noticed by Webster, but it is strikingly confirmed by the following passage from Bracton, being the commencement of the

old appeal of robbery: *A. appellat B. quod sicut fuit in pace domini regis, tali loco, tali die, &c. venit idem B. cum vi sua, et nequiter, et in feloniam, et contra pacem domini regis, et in roberia abstulit ei C. s. iii. d. et unum equum talis pretii, et unam robam de viridi talis pretii*; *A.* appeals (accuses) *B.* that as he was in the peace of the lord the king, in such a place, on such a day, &c. the said *B.* came with his force, and wickedly and feloniously, and against the peace of the lord the king, and in robbery [that is, as a robber] took away from him a hundred shillings and three pence, and one horse of such a price, and one robe of vert [of green] of such a price. *Bract.* fol. 146.

**ROBBOUR, Robour.** *L. Fr.* [from *robber*, to rob.] A robber. *De robbours et de larouns*; of robbers and of thieves. *Britt.* c. 15. *Yearb. M.* 3 *Edw. II.* 55.

**ROBE.** *Fr.* A term used by the people of the sea, for a vessel's cargo. Spanish and Italian navigators use the same word in the same way. It is, says Cleirac, *nome generalissimo che comprende boni mobili, immobili et merci*. Further on he says, it is the same with *χρῆμα* in Greek, *res* in Latin, and *bien* or *richesse* in French, and comes from the French *desrober* or the Spanish *robar*, (Anglicè, to rob.) *Meredith's Emerigon on Ins.* 359, 360, note.

**ROBERIA.** *L. Lat.* In old English law. Robbery. *In robberia*; in robbery; in the manner of a robber; as a robber. *Bract.* fol. 146.

**ROBERDSMEN, Robersmen.** In old English law. Persons who, in the reign of Richard I. committed great outrages on the borders of England and Scotland. Said to have been the followers of Robert Hood, or Robin Hood. 4 *Bl. Com.* 245. 3 *Inst.* 197.

**ROBUR BELLI.** *Lat.* Strength of war. Words used by Bracton in explaining the meaning of the word *barones*, (barons.) *Bract.* fol. 5 b. Quoted in 2 *State Trials*, 1358.

**RODA.** *L. Lat.* In old English law. A rod, or perch. A measure of land. *Spelman.*

**RODKNIGHTS, Rodknyghts.** [from *Sax. rad*, road, and *cnytt*, an attendant.] In old English law. Mounted retainers; vassals or tenants whose service was to *ride* with their lord or lady, from manor to manor. *Bract.* fol. 79 b. *Spelman. Fleta*, lib. 3, c. 14, § 7.

**ROGARE.** *Lat.* In the Roman law. To ask. *Rogare legem*; to ask for a law, to propose it for adoption. Derivatively, to vote for a law thus proposed, to pass a law. Laws were passed in the assemblies of the people, in the form of *asking* and answering a question. The consuls *asked*, "*Velitis, jubeatis, Quirites?*" (Do you so will, or order, Romans?) Those who were in favor of the law, in giving their vote, answered, "*Uti rogas, volo, vel jubeo*;" (As you *ask*, I will or order;) or, when the vote was by tablet or ballot, they threw in a ballot, marked with the letters *U. R.* (*uti rogas.*) *Calv. Lex. Adam's Rom. Ant.* 97—100. *A. Gell. Noct. Att.* x. 20. *Tayl. Civ. Law*, 9, 155.

In modern legislative assemblies, also, laws are passed by the same formula of interrogation. The question "Shall the bill pass?" may be compared to the "*Velitis, jubeatis?*" of the Romans.

**ROGATIO.** *Lat.* [from *rogare*, q. v.] In the Roman law. An asking; a question or interrogation. An asking for a law; a proposal of a law for adoption or passage. Derivatively, a law passed by such a form. Gellius calls it the very head, origin and fountain of all popular legislation. *Noct. Att.* x. 20. 7. Laws are passed at the present day by the same form of taking a question.

**ROGATOR.** *Lat.* [from *rogare*, q. v.] In the Roman law. The proposer of a law. *Tayl. Civ. Law*, 195.

**ROGO.** *Lat.* In the Roman law. I ask. A common word in wills. *Dig.* 30. 108. 13, 14. *Id.* 31. 77. 25.

**ROGUE.** In English criminal law. A sturdy beggar; a vagrant of either sex. The word is commonly associated with *vagabond* in English statutes, though neither seems to be anywhere explicitly defined. The statute 5 Geo. IV. c. 83, (amended by 1 & 2 Vict. c. 38,) enumerates fourteen different descriptions of persons as coming under the general head of "*rogues and vagabonds.*" 4 *Steph. Com.* 309.

**ROIAUME.** *L. Fr.* Realm; kingdom. *Conf. Cartar.* 25 *Edw. I.*

**ROIGN.** *L. Fr.* Queen. 1 *And.* 44.

**ROL, Roule, Roly.** *L. Fr.* A roll. *Kelham.* See *Roule*.

**ROLL.** [*L. Fr. roule*; *L. Lat. rotulus*; *Lat. volumen.*] In practice. A sheet, or connected series of sheets, of parchment, upon which the records of courts and other

proceedings are written; and which, when completed, is *rolled up*, and permanently kept in that form. See *Rotulus*.

In English practice, there were formerly a great variety of these *rolls*, appropriated to the different proceedings; such as the *warrant of attorney roll*; the *process roll*; the *recognizance roll*; the *imparlance roll*; the *plea roll*; the *issue roll*; the *judgment roll*; the *scire facias roll*; and the roll of proceedings on writs of *error*. 2 *Tidd's Pr.* 729, 730.

The ancient public records of Great Britain consist of a great variety of *Rolls*; as the *Rolls of Parliament*, the most important branch; the *Charter Rolls*, the *Patent Rolls*, the *Close Rolls*; the *Gascon*, *Norman*, *French*, *Roman*, *Scotch* and *Welsh Rolls*; the *Coronation Rolls*; the *Pipe Rolls*; the *Memoranda Rolls*, and others; the *Rolls of the Curia Regis*, &c. See all these particularly described in *Hubback's Evidence of Succession*, 607—636.

*Rolls*, (*rotuli*) and counter-rolls, (*contra rotuli*) were anciently kept by coroners and sheriffs. See *Fleta*, lib. 1, c. 18. But none of these appear to have been preserved. *Rolls* were also kept by ordinary persons, such as bailiffs and receivers of moneys; and with these rolls and tallies accounts were kept. See *Fleta*, lib. 2, c. 70, § 11.

**ROLL.** In modern practice. A term applied to judicial and other records, whether kept on parchment or paper, and although rarely or never *rolled up*, or kept in *roll form*. In this respect, the word has entirely departed from its original and appropriate signification.

**ROLLS OFFICE OF THE CHANCERY.** An office in Chancery lane, London, where are deposited the rolls and records of the High Court of Chancery, of which the *Master of the Rolls* (q. v.) is, by virtue of his office, the keeper. Anciently called *Domus Conversorum*, (q. v.)

**ROLLS OF PARLIAMENT.** A series of rolls commencing in the reign of Edward I. and forming, according to Mr. Hubback, by far the most important branch of the public records of the kingdom, from their antiquity, and the multiplicity of subjects which, in the earlier periods of English history, came before the parliament. Some of these *Rolls* are kept in the Chapter-House at Westminster, others in the Tower, and the rest in the Chapel of the *Rolls*. *Hubb. Evid. of Succession*, 600—613.

**ROMAN LAW**, in a general sense, comprehends all the laws which prevailed among the Romans, without regard to the time of their origin, including the collections of Justinian, (now generally denominated the *civil law*.) 1 *Mackeld. Civ. Law*, 9, § 18.

In a more restricted sense, the Germans understand by this term, merely the law of Justinian, as adopted by them. *Id. note*. In England and the United States, however, there seems a propriety in limiting its application to all the laws of the times anterior to Justinian, distinguishing the collections of that emperor by the term *civil law*. *Butl. Hor. Jur.* 30. It is clear that a large portion of the *Roman law* was excluded from the *Corpus Juris Civilis*.

**ROMESCOT.** [from *Rome*, and *Sax. sceat*, tribute.] In old English law. An annual tribute of one penny from every family, paid to Rome at the feast of St. Peter. Otherwise called *Romepenny*, *Peterpence*, and *Rome fee*, (*Rome-feah*.) *Spelman. Cowell*.

**"ROOM,"** held not to import a place of public resort. 4 *Ohio St. R.* 467.

**ROSETUM.** L. Lat. In old records. A low watery place of reeds and marshes. *Cowell*.

**ROTA.** L. Lat. Succession; rotation. "*Rota* of presentations," "*rota* of the terms." 2 *W. Bl.* 772, 773.

**ROTA.** The name of a court held at Genoa, in or previous to the sixteenth century, the decisions of which, in maritime and commercial cases, are contained in the work of Straccha *De Mercatura*. These decisions are much admired for their equity and wisdom, and are frequently referred to by Roccus, in his treatise *De Navibus et Naulo*. See *Ingersoll's Roccus*, Note iii.

**ROTA.** Span. In Spanish law. Obliterated. *White's New Recop.* b. 3, tit. 7, c. 5, § 2.

**ROTHER BEASTS.** In old English law. Horned cattle. *Cowell*.

**ROTULUS.** L. Lat. In old English law. A roll, composed of one or more skins (*membranæ*) of parchment; a record on a parchment roll. See *Bract. fol.* 352 b.

**ROTULUS WINTONIÆ.** L. Lat. The Roll of Winton, or Winchester. A term sometimes applied to Domesday Book. But, according to Spelman, it was properly the name of a similar record made by King Alfred.

**ROTURE.** Fr. In old French and Canadian law. A free tenure without the privilege of nobility; the tenure of a free commoner. See *Dunkin's Address*, 6.

**ROTURIER.** Fr. In old French and Canadian law. A free tenant of land on services exigible either in money or in kind. *Steph. Lect.* 229. A free commoner; one who held of a superior, but could have no inferior below him. *Dunkin's Address*, 5, 6.

**ROULE, Roulle.** L. Fr. A roll. *Britt.* c. 1, 26. *Conf. Cart.* 25 Edw. I. *Fet Assaver*, § 30.

**ROUP.** Sc. In Scotch law. A sale by auction. *Bell's Dict. voc. Auction.*

**ROUT.** [L. Lat. *routa*.] In English criminal law. A disturbance of the peace by persons assembling together with an intention to do a thing, which, if it be executed, will make them rioters, and actually making a motion towards the execution thereof. 4 *Steph. Com.* 278.—The unlawful assembling of a number of persons with intent to commit by violence some unlawful act. *Spelman.*

**ROUTA, Ruta, Rutta, Rotta.** L. Lat. [from Germ. *rott*, a ball, band, or company; Græco-barb. *ρῶτα*, from Lat. *rota*, a wheel.] In old European law. A company; a band; a troop. *Spelman.* Hence the English *route*, (q. v.) which the Saxons called *loth*.

**ROUTE.** Fr. In French insurance law. The way that is taken to make the voyage insured, (*iter viagii*.) The direction of the voyage assured. *Emerig. Tr. des Ass.* ch. 13, sect. 5, § 1.

**ROUTOUSLY.** [L. Lat. *routose*.] In pleading. A technical word in indictments, generally coupled with the word *riotously*, (q. v.) 2 *Chitt. Crim. Law*, 488.

**ROY, Rey, Rei.** L. Fr. King; a king; the king. *Britt.* fol. 1. *Kelham.*

**Roy n'est lie per ascenn statute, si il ne soit expressement nosme.** The king is not bound by any statute, if he be not expressly named to be so bound. *Jenk. Cent.* 307. *Broom's Max.* 31, [50.]

**ROYAL FISH.** [Lat. *piscis regalis*.] Whale and sturgeon; so called in English law, as belonging to the king by prerogative, when thrown ashore, or caught near the coast. A branch of the king's ordinary revenue. 1 *Bl. Com.* 290. 2 *Steph. Com.* 554. *Hale's Anal.* sect. viii. According to Sir Matthew Hale, there are but three royal fish, viz., sturgeon, porpoise, and

balæna, which is usually rendered a whale. *Hale de Jur. Mar.* pars 1, c. 7. In the Black Book of the Admiralty, they are mentioned as "whales, balens, sturgeon, porpoise ou graupise." Cited *ibid.* The latter word *Hale* translates "great fish."

**ROYAL MINES.** In English law. Mines of silver and gold. 1 *Bl. Com.* 294.

**ROYNE, Roygn, Roygne, Roign.** L. Fr. Queen; a queen; the queen. *Kelham.* *Yearb.* P. 11 Hen. VI. 20. 1 *And.* 44. *Dyer*, 94.

**ROYNES.** In old English law. Streams; currents, or other usual passages of rivers and running waters. *Cowell.*

**R'S.** A contraction of *Regis*. 1 *Instr. Cler.* 12.

**RUBRIC.** [from Lat. *ruber*, red.] In Scotch law. The title of a statute. So termed because anciently it was written in red letters. *Bell's Dict.*

**RUCHE.** L. Fr. A bee-hive, made of rushes. *Kelham.*

**RUINA.** Lat. In the civil law. Ruin; the falling of a house. *Dig.* 47. 9.

**RULE.** L. Fr. and Eng. [from Lat. *regula*.] In practice. An order made by a court for the regulation of its practice; otherwise called a *general rule*, (*regula generalis*.)

An order made a court between the parties to an action or suit, either upon the actual motion of counsel, or without motion. A *rule* of court is distinguished from a judge's *order*. See *Order*.

**RULE NISI.** In practice. A rule to show cause why a party should not do a certain act required, or why the object of the rule should not be enforced; a rule which is made absolute after service, *unless (nisi)* good cause is shown to the contrary.

**To RULE.** In practice. To require by rule; to enter a rule against. To *rule* a sheriff to return a writ, is to enter a rule requiring him to return it.

**To determine or decide.** A court is said to *rule* a point; to *rule* in favor of one or the other party.

**RULE IN SHELLEY'S CASE.** A celebrated rule in English law, propounded in Lord Coke's reports in the following form,—that whenever a man, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the word *heirs*

is a word of *limitation* and not of *purchase*. 1 *Co.* 104 a, *Shelley's case*. In other words, it is to be understood as expressing the quantity of estate which the party is to take, and not as conferring any distinct estate on the persons who may become his representatives. 1 *Steph. Com.* 308. Or, as it may be more concisely expressed, the limitation to the heirs entitles the ancestor to the whole estate. 1 *Preston on Estates*, 263. 4 *Kent's Com.* 215. See 3 *Maryland R.* 505.

**RULE OF 1756.** In international law. A rule relating to the trade of neutral nations in time of war, first practically established in the year 1756; the substance of which is,—that neutrals are not to carry on with a belligerent power a trade not open to them in time of peace. 1 *Kent's Com.* 82—85.

**RULES.** In American practice. This term is sometimes used to denote proceedings in an action out of court, or in vacation, and the times of such proceedings. Thus, in Virginia, “an irregularity committed at *rules* may be corrected at the next term of the court.” 12 *Grattan's R.* 312. “At the August rules, 1852, the declaration was filed and a common order taken.” *Id. ibid.*

**RULES OF THE KING'S BENCH PRISON.** In English practice. Certain limits beyond the walls of the prison, within which all prisoners in custody in civil actions were allowed to live, upon giving security by bond, with two sufficient sureties, to the marshal, not to escape, and paying him a certain per centage on the amount of the debts for which they were detained. *Bagley's Pr. Holt-house.*

The term “*rules*” has sometimes been used in this sense in American practice. 3 *Bibb's R.* 202.

**RUMPERE.** Lat. In the civil law. To break; to revoke. *Rumpitur testamentum cum, in eodem statu manente testatore, ipsius testamenti jus vitatur*; a testament is broken when, the testator remaining in the same state, the legal force of the testament itself is destroyed. *Inst.* 2. 17. 1. A testament was thus broken (*ruptum*,) by the subsequent adoption of a child, or by the making of a subsequent testament. *Id.* 2. 17. 1, 2, 3. See *Dig.* 28. 3.

To **RUN.** [Lat. *currere*; L. Fr. *courir*.] To operate; to have or take effect. A statute of limitations is said to *run* against

a claim, to commence *running*, to continue to *run*, &c. See *Currere*.

To pass; to follow; to go with, or accompany. A covenant is said to *run* with land, where it is inseparably annexed to the estate, and passes with it. See *Covenant running with land*.

**RUN.** In American law. A water-course of smaller size. 2 *Bibb's R.* 354.

**RUNCARIA, Roncaria.** L. Lat. [L. Fr. *roncier*.] In old English law. Land full of brambles and briars. *Co. Litt.* 5 a.

**RUNCINUS.** L. Lat. In old English law. A load-horse; a sumpter horse or cart-horse; a *rowncy*, as Chaucer calls it. *Domesd. titt. Norfolk. Rex H. de Galgow. Spelman.*

**RUNNING ACCOUNT.** An open unsettled account, as distinguished from a stated and liquidated account. “Running accounts mean mutual accounts and reciprocal demands between the parties, which accounts and demands remain open and unsettled.” Blackford, J. 1 *Indiana R.* (Carter,) 335.

**RUNNING DAYS.** In maritime law. Days allowed in a charter-party, for loading and unloading a vessel, and for other purposes. *Abbott on Ship.* 254, 255, 259.

**RUN-RIG.** Sc. In Scotch law. A species of land tenure. Explained to mean, “furrow by furrow, that is, a certain narrow space.” 7 *Wils. & Shaw's R.* 378.

**RUPTA.** L. Lat. In old records. A band or troop. *Cowell. Spelman. Ruptarii*; soldiers; troopers. *Id.*

**RUPTUM.** Lat. [from *rumpere*, q. v.] In the civil law. Broken. A term applied to a will; (*ruptum testamentum*.) *Inst.* 2. 17. 3. *Dig.* 28. 3.

**RUPTURA.** L. Lat. [from *rumpere*, to break.] In old records. Grounds broken up, (by the plough;) arable land. *Orderic. Vital.* lib. 5, p. 596. *Cowell.*

**RURAL DEAN.** [L. Lat. *decanus ruralis*.] In English ecclesiastical law. An ancient officer of the church, now grown out of use, otherwise called bishop's dean, (*decanus episcopi*.) A kind of bishop's deputy, appointed to inspect the conduct of the parochial clergy, and clothed with an inferior degree of judicial and coercive authority.\* 1 *Bl. Com.* 383. *Spelman, voc. Decanus.*

**RURAL SERVITUDE.** [Lat. *servitus prædii rustici*.] In the civil law. A ser-

vitute annexed to a rural estate, (*prædium rusticum*.) 1 *Mackeld. Civ. Law*, 338, § 309.

RUSCA. *Ruscha*. L. Lat. [from L. Fr. *ruche*.] In old English law. A hive, or bee-hive, (*mellarium*, *alveare*.) *Spelman. Cowell*.

RUSCARIA. L. Lat. In old English law. Soil where *rusci*, or kneeholm grows. *Co. Litt.* 5 a.

RUSSATI, *Russetti*. L. Lat. In old English law. Russets; a kind of cloth mentioned in *Magna Charta*, (c. 25.)

RUSTICI. Lat. [from *rus*, country.] In feudal law. Natives of a conquered country. *Feud. Lib.* 2, tit. 27, §§ 9—11. 2 *Bl. Com.* 413.

In old English law. Inferior country tenants, churls, or chorls, [Sax. *ceorles*,] who held cottages and lands by the services of ploughing, and other labors of agriculture, for the lord. *Paroch. Antiq.* 136. *Cowell*.

RUSTICUM JUDICIUM. L. Lat. In maritime law. A rough or rude judgment or decision. 3 *Kent's Com.* 231. *Story on Bailm.* § 608 a.

UTA ET CÆSA. Lat. In the civil law. Things dug, (as sand and lime,) and things cut, (as wood, coal, &c.) *Dig.* 19. 1. 17. 6. Words used in conveyancing.

RUTARI, *Ruttarii*. L. Lat. In old records. Stipendiary forces; mercenary soldiers. *Cowell*. This word occurs in the Articles of King John's *Magna Charta*, (c. 4,) but is omitted in the charter itself. See *Ruptarii*.

RYBAUD. L. Fr. In old English law. A ruffian; a vagabond. *Brownl.* (part 2,) 340.

RYCHE. L. Fr. Rich. *Poure ou ryche*. *Britt.* c. 68.

RYVAILLE. L. Fr. Shore. *Ryvaille de la meer*; sea-shore. *Britt.* c. 23.

RYVIRE. L. Fr. A river. *Kelham*.

## S.

S. The common abbreviation of *Salutem*, in the epistolary correspondence of the Romans. See *Salutem*.

S. A common abbreviation of *scilicet*, (to wit,) in the old books. *Dyer*, 2, 31 b. *Bract. passim*.

S. F. S. An abbreviation, in the civil law, of *sine fraude sua*, (without fraud on his part.) *Calv. Lex*.

S. P. An abbreviation of *sine prole*, (q. v.)

SA ET LA. L. Fr. Here and there. *Kelham*.

SAAL, *Sagel*. L. Fr. A seal. *Kelham*.

SABBATUM. Lat. In old records. Peace; rest. *Postquam Willielmus Rex advenit et sedebat in sabbato*, &c.; after King William came and settled in peace, &c. *Domesday*, cited in *Spelman*.

SABULO. Lat. In old English law. Gravel. *Hale de Jur. Mar.* pars 1, c. 6.

SABULONARIUM. L. Lat. [from *sabulo*, q. v.] In old records. A gravel-pit, or the free use of it. *Cowell*.

SABURRA. L. Lat. In old maritime law. Ballast. *Loccen. de Jur. Mar.* lib. 2, c. 1, § 7.

SAC, SAK. [L. Lat. *saca*, *sacha*; from Sax. *sac*, a cause, sake.] In old English and Scotch law. The cognizance which a lord had in his court, of causes and suits arising among his vassals or tenants. The privilege which a lord had within his manor, of holding pleas of trespasses and other controversies arising there, and of imposing, levying and collecting of his tenants, fines and amercements in regard of the same. *Spelman. Bract.* fol. 154 b. —A privilege touching plea, or correction of trespasses of men within a manor. *Minshew*, cited in *Cowell. Rastal, Expos.*

A forfeiture. *Id. ibid.*

SACA, *Sacca*, *Sacha*. L. Lat. In old English and Scotch law. Sak or sac, (q. v.) *LL. Edw. Conf.* c. 21. *Reg. Maj.* lib. 1, c. 4, § 2.

SACABURTH, *Sakaburth*, *Saccabor*, *Sacaber*, *Sacborgh*. Sax. [Sc. *sacreborgh*, *sickerborgh*; L. Fr. *sakber*.] In old English law. The person from whom a thing had been stolen, and by whom the thief, having it on his person, was freshly pursued. *Ubi latro deprehensus est seysitus de aliquo latrocinio,—et insecutus fuerit per aliquem cujus res illa fuerit, qui dicitur sakaburth.* *Bract.* fol. 150 b. *Insecutus per saccabor.* *Id.* fol. 154 b. *Insecutus per aliquem cujus res illa fuerit, quæ dicitur sacborgh.* *Fleta*, lib. 1, c. 38, § 1. See *Id.* c. 47, § 2.

*Spelman* supposes this word to import the same thing with the Scotch *sickerborgh*, that is, a sure pledge; from *sicker*, sure, and *borgh*, a pledge; the finding of the thing stolen on the person of the thief when caught, being considered the surest pledge or token of his guilt. Or it might be so called from *sac*, a cause or prosecution, and *burh*, a pledge; the thing stolen being, as it were, the pledge or proof of cause

of action. Or, in the form *saccabor*, or *sacaber*, it might mean one who bears, brings, or prosecutes a cause, (*saca*.) Lord Coke interprets *sakebere*, *sacbere* or *sacburgh*, (as he writes the word,) to mean one who "did bear the bag," from "*sak*, an ancient French word, signifying a bag, purse or pouch," being, in legal understanding, he that was robbed of his money in his bag. 3 *Inst.* 69.

**SACCABOR.** Sax. In old English law. The person from whom a thing had been stolen, and by whom the thief was freshly pursued. *Bract.* fol. 154 b. See *Sacaburth*.

**SACCULARII.** Lat. [from *saccus*, a bag or purse.] In the civil law. Persons who cheated in wares or money, by means of sacks or bags which they carried with them; (*vetitas in sacculo artes exercentes*.) *Dig.* 47. 11. 7, and gloss. *in marg.* Blackstone, referring to this passage, translates the word *cutpurses*. 4 *Bl. Com.* 242. But this is hardly warranted by the text.

**SACCUS.** L. Lat. In old English law. A sack. A quantity of wool weighing thirty or twenty-eight stone. *Fleta*, lib. 2, c. 79, § 10. According to Cowell, twenty-six stone. Two ways made a sack, and twelve sacks a last. *Fleta*, lib. 2, c. 12, § 2.

A sack or pack; a pack-saddle. *Fleta*, lib. 2, c. 21.

In a MS. *compotus* or household book of Bolton Priory, in the possession of the Duke of Devonshire, (A. D. 1851,) the *ductor saccorum* is mentioned among the *liberi servientes* (free servants) of the priory, and is translated *sackman*.

**SACCUS CUM BROCHIA.** L. Lat. In old English law. A sack with a broche, broach, or pointed iron. *Si quis teneat per servitium inveniendi domino regi, certis locis et certis temporibus, unum hominem, et unum equum, et saccum cum brochia pro aliqua necessitate vel utilitate exercituum suum contingente*; if any one holds by the service of finding for the king, at certain places and certain times, one man and one horse, and a sack with a broach, for any necessity or advantage happening to his army. *Bract.* fol. 36. It was a species of petty serjeanty, which Bracton otherwise describes,—*ut si quis teneatur invenire domino regi equum et saccum cum brochia, eunti in Walliam cum exercitu*; as if one should be bound to find for the king a horse, and a sack with a broach, on

his going to Wales with his army. *Id.* fol. 87 b. See *Fleta*, lib. 1, c. 11, § 1.

\* \* Spelman supposes the words *saccus* and *brochia* to be expressive of two measures of capacity; *saccus*, a sack or bag for carrying dry articles, and *brochia*, (from Fr. *broc*,) a large bottle or jar for carrying liquids. *Gloss. voc. Brochia.* *Brochia*, however, seems to be merely the Latin form of the Fr. *broche*, the meaning of which appears from what may be considered the parallel passage of Britton, in which he observes that "petit serjeanty is a service issuing out of tenements, to do to us (the king) some small service, when we have occasion to ride with our army, (*quant nous devons chevaucher en hoste*,) amounting to a demi-mark, or a lance, (*ou un broche*,) or a buckler, (*ou un boson*,) or a bow without a string, or a pair of spurs, or any like service." *Britt.* c. 66. *Brochia* seems to have been the same thing with what is called *pryk* in a passage (closely resembling those above quoted from Bracton,) cited by Spelman from the Roll of Fines in 1 Ric. II. where it is said that the tenant holds *per servitium inveniendi unum equum, unum saccum, et unum pryk, in guerra Walliæ, quandocumque contingerit regem ibi guerrare*. Spelman gives no definition of the word *pryk*, but merely refers to the word *brochia* in his own glossary. Cowell also passes it over without any explicit definition, but Blount observes that "it seems to signify an old fashioned spur, with one point, not a rowel." But why one spur, (*unum pryk*,) should be so emphatically reserved, contrary to the *deus esporouns* (two spurs) of Britton, and the "pair of spurs" in all the old reservations of service, does not appear. And see *Fleta*, lib. 1, c. 11, § 1. The use of a pointed iron instrument (*stimulus ferreus*, or *cuspis*,) as part of a horseman's military equipment, is further illustrated by the quotation which follows.

*Saccus* seems to have been a sack, or pack of cloth, used either ordinarily with a saddle, (*sella*,) or occasionally, as a substitute for it. A passage from an old record quoted by Cowell, throws some light upon its meaning: *Edmundus Busche tenet terras in Morton, Com. Essex, per servitium inveniendi unum stimulum ferreum pro uno Warroks, super quoddam cloth-sak, quandocumque D. rex equitaverit in exercitu versus partes Walliæ, tempore guerræ*; Edmund Busche holds lands in Mor-

ton, county of Essex, by the service of finding one iron point [spur?] for one Warroks, upon a certain cloth-sack, whenever the king shall ride in his army towards the parts of Wales, in time of war. 22 Ric. II. *Blount, of Tenures*, 32. *Cowell, voc. Warroks*. The meaning of the important word *warroks*, in this passage is, however, unexplained, either by Spelman or Cowell. In some of the old copies of Bracton, it may be further observed, the passages above quoted from that author have *sellam*, (a saddle,) instead of *saccum*.

The word *cum*, (with,) in the phrase under consideration, denotes that the *sacus* and the *brochia* were ordinarily used or kept together. *Brochia* has sometimes been translated *needle*, as though carried for the purpose of repairs to horse equipments. That it was a pointed instrument of iron, and not a jar or pitcher, as Spelman has supposed, seems clear from the authorities above referred to.

SACHAUMENT. L. Fr. [from *sacher*, to know.] Knowingly; willingly. *Kelham*.

SACHENT. L. Fr. [from *sacher*, to know.] Know; know ye, (*sciant*, *nove-riant*.) A word used in the commencement of deeds or charters. *Sachent à toutz ceux que icy sont, et à toutz ceux que avener sont, que jeo Johan ay done, &c.* Know all those who are here, and all those who are to come, that I, John, have given, &c. *Britt. c. 39. See Sciant presentes et futuri*.

SACHER. L. Fr. [from Lat. *scire*, q. v.] To know. *Saches, sachez, sachiez*; know; know ye. *Stat. Confirm. Chartar. c. 1. Kelham. Et chescun sache son several*; and each one knows his several, [separate portion.] *Britt. c. 55. Saches tous gens*; know all people. *Yearb. M. 3 Hen. VI. 34.*

SACIRE. L. Lat. In old European law. To seise; to take into possession. Supposed by Spelman to be the original form of *saisire* and *seisire*, (qq. v.) and to be ultimately derived from the Lat. *sociare*, to join, to add another's property to one's own, (*rem alterius nostris sociare*;) to appropriate. The phrase *ad proprium sacire* occurs in the *Formulae Solennes*, num. 19, 150. In the Laws of the Bavarians, *sociare* is actually used in a similar connection. *Sibi sociare in patrimonium. LL. Boior. tit. 17, l. 2.*

SACQUIER. Fr. In old French maritime law. An officer in the ports of

Guyenne, mentioned by Cleirac in his Observations on the Laws of Oleron, whose business was to load and unload vessels laden with salt, corn or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandise otherwise. *Laws of Oleron, Art. xi.* The term seems to be derived from the *saccarius* of the Roman law. *Cod. Theodos. lib. 14.*

SACRA. Lat. In the Roman law. The right to participate in the sacred rites of the city. *Butler's Hor. Jur. 27.*

SACRAMENTALES. L. Lat. [from *sacramentum*, an oath.] In feudal law. Compurgators; persons who came to purge a defendant by their oath that they believed him innocent. *Feud. Lib. 1, tit. 4, sect. 3. Id. tit. 10, 26.*

SACRAMENTUM. Lat. [from *sacrare*, to consecrate, *sacrum facere*, to make sacred.] In the Roman law. A sum of money deposited by both the parties to an action, which fell to the gaining party, after the cause was determined. *Festus. Varro de Ling. Lat. iv. 36. Adam's Rom. Ant. 249.*

A suit or cause. *Id. ibid.*

A military oath; an oath taken by soldiers on their enlistment. *Calv. Lex.* Its form is given by Aulus Gellius. *Noct. Att. xvi. 4, citing Cincius de Re Militari, lib. 5.*

SACRAMENTUM. Lat. [L. Fr. *sere-ment*.] In the old common law. An oath; the oath of a juror, witness or party to a suit. *Repellitur a sacramento infamis.* An infamous person is thrust back [kept from, prevented by disqualification,] from taking an oath. *Bract. fol. 185. Dicunt super sacramentum suum*; say upon their oath. *Cowell.*

*Sacramentum habet in se tres comites, veritatem, justitiam et judicium; veritas habenda est in jurato, justitia et judicium in judice*; an oath implies or requires three attendant circumstances; truth, justice and judgment; truth is to be observed in the party sworn, justice and judgment in the judge [before whom the oath is taken.] 3 *Inst.* 160.

Lord Coke's derivation or composition of this word from *sacra*, sacred, and *mens*, mind, "because it ought to be performed with a sacred and religious mind," will hardly be acquiesced in. 3 *Inst.* 165. See *Agreementum, Testamentum*.

SACRAMENTUM DECISIONIS. Lat.

In the civil law. The oath of decision; the decisive oath; the voluntary oath of a party to a suit, by which it was allowed to be decided.\* Where one of the parties to a suit was not able to prove his charge, he might offer to refer the *decision* of the cause to the *oath* of his adversary. *Cod.*

4. 1. 12. 3 *Bl. Com.* 342.

**SACRAMENTUM FIDELITATIS.** L. Lat. In old English law. The oath of fealty. See the form of this oath in law French. *Reg. Orig.* 303.

**SACREBORGH.** Sc. More properly *sickerborgh*, (q. v.)

**SACREMENT,** *Sagrament.* L. Fr. An oath. *Kelham.*

**SACRILEGE.** [from Lat. *sacrilegium*, from *sacra*, sacred things, or *sacrum*, sacred, and *legere*, to steal.] In English criminal law. Larceny from a church. 4 *Steph. Com.* 164. The crime of breaking a church or chapel, and stealing therein. 1 *Russell on Crimes*, 843. See *Sacrilegium*. This does not seem to be recognized as a distinct crime, in American jurisprudence.

In old English law. Profanation of holy things;\* the alienation to lay-men or to profane or common purposes, of what was given to religious persons, and to pious uses. *Cowell.*

**SACRILEGIUM.** Lat. [from *sacrum*, sacred, and *legere*, to steal.] In the civil law. The stealing of sacred things, or things dedicated to sacred uses; the taking of things out of a holy place. *Calv. Lex. Brissonius.*

The violation of an imperial rescript or constitution. *Sacrilegii instar est rescripto principis obviari*; it amounts to sacrilege, to oppose or hinder the execution of the prince's rescript. *Cod.* 1. 23. 5. 1 *Bl. Com.* 74. The text of the Code, here referred to, reads, *Sacrilegii instar est—divinis obviare beneficiis.*

**SACRILEGUS.** Lat. In the civil and common law. A sacrilegious person; one guilty of sacrilege.\* He who takes away any thing that is given for the divine and true service of God. *Sacrilegus omnium prædonum cupiditatem et scelera superat*; a sacrilegious person exceeds all robbers in cupidity and wickedness, [surpasses the cupidity and wickedness of all robbers.] 4 *Co.* 106 a, *Adam's and Lambert's case.*

The word *sacrilegus* in this passage is erroneously translated *sacrilege*, in Branch's *Principia* and Wharton's *Lexicon*.

**SACR'M.** A contraction of *sacramentum*. 1 *Instr. Cler.* 12.

**SACROBARRA.** L. Lat. A word given by Spelman from an old manuscript entitled *De officio coronatoris*, which he suggests might mean the same with *sacri-legia*.

*Sapenumero ubi proprietas verborum attenditur, sensus veritatis amittitur.* Oftentimes where the propriety of words is attended to, [where the attention is occupied with the proper meaning of words,] the true sense is lost. *Branch's Pr.* 7 *Co.* 27.

**SÆPIUS.** Lat. In old practice. Often. See *Pluries*.

**SÆVITIA.** Lat. [from *sævus*, cruel.] In the law of divorce. Cruelty; any thing which tends to bodily harm, and in that manner renders cohabitation unsafe. 1 *Hagg. Cons. R.* 458. One of the grounds of divorce *à mensa et thoro*. To constitute cruelty, proof must be given of a reasonable apprehension of bodily hurt. *Id.* 37—40. See *Shelford, Marr. & Div.* 425—438. 2 *Kent's Com.* 125, 126.

**SAFE-CONDUCT.** [Fr. *sauf-conduit*; L. Lat. *salvus conductus*.] In old English law. A license or permission in the form of a writ, granted by the king under the great seal, to a stranger or foreigner, to come into, remain in, go through and depart from the kingdom without molestation, during a certain specified time. *Spelman. Reg. Orig.* 25 b. All merchants were allowed by Magna Charta, (unless publicly prohibited beforehand,) to have safe-conduct of this kind, except in time of war. *Mag. Chart. c.* 30. 1 *Bl. Com.* 260.

In international law. A passport or privilege granted in war, exempting the party to whom it is granted from the legal effects of war, during the time and to the extent described in the permission.\* 1 *Kent's Com.* 162.—A passport or privilege granted, in time of war, by the sovereign or government of a country, or other persons duly authorized, to the subjects of a hostile power, permitting them to depart in safety, and to take with them certain effects specified; or it may be granted for the removal of effects only.\* See *Id.* 162, 163.

A document granted to the master of a merchant vessel, for the protection of the vessel in time of war. See *Passport*.\*

**SAFE-GUARD.** [L. Fr. *sauf-guard*; L. Lat. *salva gardia*.] In old English law.

A special privilege or license, in the form of a writ, under the great seal, granted to strangers seeking their right by course of law within the king's dominions, and apprehending violence or injury to their persons or property from others. *Reg. Orig.* 26.

**SAFE PLEDGE.** [L. Lat. *salvus plegius*.] In old English law. A sufficient surety. *Bract.* fol. 160 b. See *Salvus plegius*.

**SAGE.** L. Fr. Learned; wise. *Jeo oye un foits un sage home dire que*, &c.; I once heard a learned man say that, &c. *Yearb.* H. 6 Edw. III. 16.

**SAGEMENT.** L. Fr. Cautiously; prudently. *Fet Assaver*, § 44.

**SAGES DE LA LEY.** L. Fr. Sages of the law; persons learned in the law. *Art. sup. Chart.* c. 5. A term applied to the chancellor and justices of the King's Bench. *Id. ibid.*

**SAGIBARO.** L. Lat. [from *sac*, or *sag*, a cause, and *baro*, a man.] In old European law. A judge or justice; literally, a man of causes, (*vir causarum*,) or having charge or supervision of causes, (*causis et litibus præpositus*.) *Spelman*. One who administered justice and decided causes in the *mallum*, or public assembly. *Id.* L. *Salic.* tit. 56, §§ 2, 3, 4. *LL. Inæ*, c. 6.

**SAID.** [Lat. *dictus*; L. Fr. *dit*.] A very common word of reference in modern as well as ancient law. In Scotch law, the plural *saidis* (O. Sc. *saidis*) is used. 3 *How. St. Trials*, 597, 602. "Saidis personis;" said persons. 1 *Id.* 926.

**SAIEL.** L. Fr. Seal. *Kelham*.

**SAIGA.** L. Lat. In old European law. A German coin of the value of a penny, or of three pence. L. *Alaman.* tit. 6, § 2. L. *Boior.* tit. 8, c. 2, § 3. *Spelman*.

To **SAIL.** In insurance law. To move, on the prosecution of a voyage; to make a movement for the purpose of proceeding to sea.\* Cowen, J. 3 *Hill's* (N. Y.) R. 126. Lord Denman, C. J. 1 *Crompt. M. & R.* 809, 818. The least locomotion, with readiness of equipment and clearance, satisfies a warranty to *sail*. 3 *B. & Ad.* 514.

**SAIN, Saine.** L. Fr. Sound; strong. *Kelham*.

**SAINC.** L. Fr. Blood. *LL. Gul. Conq.* l. 9.

**SAINTS.** [L. Fr. *saintz*, *seintz*, *seyntz*.]

In old English practice. Holy things, (Lat. *sancta*;) gospels on which oaths were taken.

From the L. Fr. *seintz*, or *seyntz*, used in old statutes and treatises, it has been supposed that it was formerly common in England to swear *by the saints*, or *by God and the saints*. See *Barringt. Obs. Stat.* 177, and notes. This was doubtless the practice on some occasions; but *judicial* oaths seem to have been uniformly made *by*, or rather *on* the gospels. The expressions in Britton,—*si luy eyde Dieu et les saintz*, (so help him God and the saints,) *si lour eyde Dieu et ses seyntz*, (so help them God and his saints,) and other passages, (see *Britt.* cc. 2, 22, 52, 68,) may be explained by the use of the corresponding Latin word *sanctæ*, in the parallel passages in Bracton and Fleta. *Sicut me Deus adjuvet et hæc sancta.* *Fleta*, lib. 1, c. 18, § 4. *Sic ipsum Deus adjuvet et hæc sancta.* *Id.* lib. 2, c. 63, § 12. And see *Id.* lib. 4, c. 9, § 1. That *sancta*, in these passages, cannot be translated *saints*, is obvious, not only from the neuter form of the word, but from the invariable use of the pronoun *hæc*, (these,) in connection with it, indicating that the things sworn by were actually *present* before the party who made the oath. That *evangelia* (gospels) was the word to be understood and supplied, appears from passages in which it is actually expressed. See *Fleta*, lib. 2, c. 12, § 17. The following passage from Bracton is conclusive on this point: After giving the words of the oath taken by the first juror sworn, *Hoc auditis justitiarum, quod ego veritatem dicam*, &c. *sic me Deus adjuvet et hæc sancta Dei evangelia*, (Hear this ye justices, that I will speak the truth, &c. so help me God, and these holy gospels of God,) he adds, *Et post eum jurabit quilibet aliorum separatim, et per se; Tale sacramentum quale A. primus jurator, s. hic, juravit, ego tenebo ex parte mea, sic me Deus adjuvet et hæc sancta*; (and after him shall each of the others separately and by himself swear, such an oath as A. this first juror has sworn, will I keep on my part, so help me God and these holy [gospels.] *Bract.* fol. 116.

**SAIO.** L. Lat. In Gothic law. The ministerial officer of a court or magistrate, who brought parties into court, (*qui reos protraxit in judicium*,) and executed the orders of his superior. *Spelman* thinks the word may be derived from the Sax.

*sagol*, or *saiol*, a staff, giving it the sense or the modern *tipstaff*.

SAIREMENT. L. Fr. An oath. *Kelham*.

SAISINA. L. Lat. An old form of *seisina*, (q. v.)

SAISIRE. L. Lat. [from L. Fr. *saisir*, to seize.] An old form of *seisire*, (q. v.)

SAKE, *Sak*. In old English law. A lord's right of amercing his tenants in his court. *Keilw.* 145.

Acquittance of suit at county courts and hundred courts. *Fleta*, lib. 1, c. 47, § 7.

SAKEBER. The French form of *saccabor* or *sacaburth*, (qq. v.) *Britt.* c. 15, 29.

SALA. L. Lat. [L. Fr. *sale*.] In old European law. A hall. *L. Alam.* tit. 81, § 1. *Spelman*.

SALARIMUM. Lat. [from *sal*, salt.] In the civil law. An allowance of provisions. *Calv. Lex*.

A stipend, wages or compensation for service. *Id.* *Dig.* 7. 1. 7. 2. *Id.* 44. 7. 61. 1.

An annual allowance or compensation. *Id. ibid.*

SALARIMUM. L. Lat. In old European law. The rents or profits of a *sala*, hall or house. *Cowell*.

Wages; stipend; annual allowance; salary. *Id.* But *quære* if this word be not the same with the *salarium* of the civil law. See *supra*.

SALARY. [from Lat. *salarium*, q. v.] An annual compensation for services rendered; a fixed sum to be paid by the year for services.

SALE. [Lat. *venditio*; Fr. *vente*.] A transmutation of property from one man to another, in consideration of some price or recompense in value. 3 *Bl. Com.* 446.—A transfer of goods for money. *Id. ibid.*—A contract for the transfer of property from one person to another, for a valuable consideration. 2 *Kent's Com.* 468.—“*Sale* is a word of precise legal import, both at law and in equity. It means, at all times, a contract between parties to give and to pass rights of property for money, which the buyer pays or promises to pay to the seller for the thing bought and sold.” Wayne, J. 8 *Howard's R.* 496, 544. See *United States Digest*, Sale. And see *Bell's Contract of Sale*, chap. 1.

“SALEABLE UNDERWOODS” construed. 10 *East*, 219, 446.

SALE NOTE. A note or memorandum of the sale of goods, given by the broker

to the buyer. Called, also, a *sold note*, (q. v.)

SALET. In old English law. A head-piece; a steel cap or morion. *Cowell*.

SALIC (or SALIQUE) LAW. [Lat. *Lex Salica*.] A body of law framed by the Salians, or Salian Franks, after their settlement in Gaul under their king Pharamond, about the beginning of the fifth century. *Esprit des Lois*, liv. 28, c. 1. It is the most ancient of the barbarian codes, (as they are sometimes called,) and is considered one of the most important compilations of law in use among the feudal nations of Europe. *Butler's Co. Litt.* Note 77, lib. 3. See *Butler's Hor. Jur.* 83. Dr. Robertson calls it “the most venerable monument of French jurisprudence.” 1 *Rob. Charles V.* Appendix, Note xxxviii. It received considerable additions from Clovis, Childebert, Clotaire, Charlemagne, and Louis le Debonnaire, and was republished by Charlemagne in 798. See *Lex Salica*.

SALIC LAW. In French jurisprudence. A term frequently applied to that fundamental law of France which excluded females from succession to the crown. Supposed to have been derived from the sixty-second title of the Salic Law, *De alode Brande*.

SALICETUM. L. Lat. [from *salix*, willow.] In old English law. A wood of willows. *Co. Litt.* 4 b. *Shep. Touch.* 95.—An osier bed, or low moist place on the banks or eyts of a river, for the growth of osiers, willows or withies. *Cowell. Salictum* is used in the civil law. *Dig.* 7. 1. 9. 7.

SALINA. L. Lat. [from *sal*, salt.] In old English law. A salt-pit; a house or place where salt is made. *Cowell*. In Coke on Littleton, this word is printed *saliva*. *Co. Litt.* 4 b.

SALLIRE. L. Lat. In old European law. To assault. The same with *assalire*, (q. v.) *Spelman*.

SALTATORIUM. L. Lat. In old records. A deer-leap. *Cowell*, citing *Pl. apud Cestriam*, 31 Edw. III. An engine for taking wild animals. *Spelman*.

SAL'TM. A contraction of *salutem*, (q. v.)

SALTUS. Lat. In old English law. A high thick wood, or forest. *Cowell*, voc. *Boscus*. A lawn in a park or forest. *Forrescue de L. L. Angliæ*, c. 29, note.

SALUS. Lat. Health; prosperity,

good or welfare. *Salus populi suprema lex.* The good or welfare of the people is the supreme law. *Bacon's Max.* 55, in reg. 12. *Broom's Max.* 1.

Safety; salvation. *Salus ubi multi consiliarii.* There is safety where there are many counsellors. 4 *Inst.* 1. *Prov.* xi. 14.

SALUTE. [Lat. *salus*.] A gold coin stamped by Henry V. in France, after his conquests there, whereon the arms of England and France were stamped quarterly. *Stow's Chron.* 589. *Cowell.*

SALUTEM. Lat. [Gr. *χαιρειν*, εὖ πράττειν.] Health; greeting; prosperity; salvation. An expression of salutation used by the Romans in the commencement of their letters or epistles, generally abbreviated, S. "C. Plinius Cornelio Tacito suo, S." *Plin. Ep.* i. 6, et *passim*. In legal instruments, it was written at length, *Titius Seio salutem.* *Dig.* 17. 1. 60. *Ille illi salutem.* *Id.* 59.

A formal word in the commencement of Roman deeds and charters, which, during the later periods of the empire, were written in an epistolary form. See *Epistola*. The corresponding Greek word, used in wills and other instruments, was *χαιρειν*. *Dig.* 31. 34. 1. In a conveyance in Greek, preserved in the Digests, the corresponding words are *πλείστα χαιρειν*; most health, or all health. *Dig.* 8. 3. 37. After Christianity had become established, *salutem* seems to have been used in its religious sense of *salvation*.

A formal word in the commencement of old English deeds, probably derived from the Roman practice above noticed. *Omnibus Christi fidelibus ad quos presentes literæ indentatæ pervenerint, A. de B. salutem in Domino sempiternam; Sciatis me dedisse, &c.* To all Christian people to whom these present [present letters] indented shall come, A. of B. sends greeting [or salvation,] in our Lord everlasting. *Litt.* sect. 372.

A formal word invariably used in the address of old English writs, which commenced in the epistolary form. *Rex vicecomiti, &c. salutem*; the king to the sheriff, &c. Greeting. *Reg. Orig. & Jud. per tot.* Translated "greeting," and retained in modern English and American writs. See *Breve*. Called by Finch the "salutation" of the writ. *Law*, b. 4, c. 1.

SALVA GARDIA. L. Lat. Safe-guard. *Reg. Orig.* 26. See *Safe-guard*.

SALVAGE. In maritime law. A com-

pensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict or recapture. 3 *Kent's Com.* 245. "The relief of property from an impending peril of the sea, by the voluntary exertions of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of *salvage*." *Curtis*, J. 1 *Curtis' R.* 376, 378. See *Id.* 353. See *Abbott on Ship.* 554. 1 *Peters' Adm. Dec.* 31, 48, 70, 87. 2 *Id.* 278, 284, 361. *United States Digest*, *Salvage*. *Marvin on Wreck and Salvage*, ch. 15.

SALVAGE SERVICE. In maritime law. Any service rendered in saving property on the sea, or wrecked on the coast of the sea. *Story*, J. 1 *Sumner's R.* 210.

SALVAGE, *Sauvage*. L. Fr. Wild; savage. *Kelham*.

SALVAIGNE, *Savagnie*, *Sauvagine*. L. Fr. Wild animals; animals *feræ naturæ*; the wild or savage state. *Kelham*.

SALVAMENTUM. L. Lat. In old European law. Safety. *Hincmar. Epist.* c. 8. *Spelman*.

SALVARE. L. Lat. [from *salvus*, q. v.] In old English law. To save. *Salvare defaultam*; to save a default. *Fleta*, hb. 6, c. 13, § 2. *Salvans*; saving; economical. *Id.* lib. 2, c. 87.

SALVER. To save. *Yearb.* H. 9 Edw. III. 3. *Salvant*; saving. M. 8 Edw. III. 38.

SALVIAN INTERDICT. See *Interdictum Salvianum*.

SALVO. L. Lat. [from *salvus*, safe.] In old conveyancing. Saving. One of the apt words of exception in a deed. *Co. Litt.* 47 a. *Perkins*, ch. 10, s. 645.

In old practice. Safely. *Fleta*, lib. 2, c. 64, §§ 19, 22. *Salvo et securè*; safely and securely. 5 *Man. G. & S.* 877.

SALVOR. In maritime law. A person by whose assistance a vessel or its cargo is saved, in whole or in part, from impending danger or actual loss; a person entitled to salvage.\* 2 *Kent's Com.* 245. See *Salvage*.

SALVUS. Lat. In old English law. Safe. *Salvus conductus*; safe conduct. *Reg. Orig.* 26. See *Safe conduct*. *Salvus et securus conductus*; safe and secure conduct. *Magna Charta*, c. 30.

**SALVUS PLEGIUS.** L. Lat. In old English practice. A safe pledge. *Bract.* fol. 160 b. Called, also, *certus plegius*, a sure pledge. *Id. ibid.*

**SALYNE.** L. Fr. A salt-pit. *Kelham.*

**SAMPLE.** A small quantity taken from the bulk of a commodity for the purpose of showing its quality.

**SANÆ MENTIS.** L. Lat. In old English law. Of sound mind. *Fleta*, lib. 3, c. 7, § 1.

**SANARE.** L. Lat. In old practice. To cure. *Nisi defaultam sanaverit*; unless he cure the default. *Fleta*, lib. 2, c. 7, § 13.

**SANCTA.** Lat. [plur. of *sanctus*.] Holy (gospels.) *Fleta*, lib. 1, c. 18, § 4. *Id.* lib. 4, c. 9, § 1. See *Saints*.

**SANCTIO.** Lat. [from *sanctus*, holy; inviolable.] In the civil law. That part of a law by which a penalty was ordained against those who should violate it. *Inst.* 2. 1. 10. That part of a law by which its inviolability was secured.

*Sanctio justa, jubens honesta, prohibens contraria*; a just [or formal] sanction, [or rule of civil conduct,] commanding what is right, prohibiting the contrary. *Bract.* fol. 2. A definition of municipal law. 1 *Bl. Com.* 122. 3 *Id.* 1, note.

**SANCTION.** [from Lat. *sanctio*, q. v.] The vindicatory part of a law, or that part which ordains or denounces a penalty for its violation. 1 *Bl. Com.* 56. See *Tayl. Civ. Law*, 171. In *Fleta*, it is said that a law is specially called a sanction, (*sanctio*), because it imposes a punishment on wrongdoers. *Fleta*, lib. 3, c. 1, § 8.

**SANCTUARY.** [Lat. *sanctuarium*, from *sanctus*, holy; Sax. *fridstoll*, *grithstole*.] In old English law. A consecrated or privileged place, such as a church or churchyard, to which, if an offender fled, his person was, (except in cases of treason and sacrilege,) secure from punishment.\* 4 *Bl. Com.* 332, 333. All privilege of sanctuary was abolished by statute 21 *Jac.* 1, c. 28.

**SANCTUS, Sanctum.** Lat. [from *sancire*.] In the civil law. That which is guarded and fenced round against injury, (*quod ab injuria hominum defensum atque munitum est*.) *Dig.* 1. 8, pr. Derived by Marcian, in the Digests, from *sagmina*, which were certain herbs carried by the legates of the Roman people to secure them from harm. *Id.* § 1.

**SANE.** L. Fr. and Eng. [from Lat. *sanus*, q. v.] Sound. *De non sane memorie*; of unsound memory; *non compos mentis*. *Litt.* sect. 405.

**SANG, Sanc, Sank.** L. Fr. [from Lat. *sanguis*, q. v.] Blood. *Kelham.*

**SANGUIS.** Lat. In the civil and old English law. Blood; consanguinity. *Sanguinem redimere*; to redeem one's blood; to pay the *merchet* or accustomed fine, for leave given to servile tenants to dispose of their daughters in marriage. *Blackst. L. Tr.* 4, 5. *Cowell.*

**SANITY.** [from Lat. *sanus*.] Soundness of mind. This is always presumed. 2 *Kent's Com.* 451.

**SANS, Sauns, Santz.** L. Fr. [from Lat. *sine*.] Without. See *infra*.

**SANS CEO QUE.** L. Fr. [Lat. *absque hoc quod*.] Without this that. Technical words formerly used in pleading by way of special traverse. *Ou mesme celuy Johan de tener sa terre en N. sicome non several, sans ceo que l'avaundit Peres et les autres y deivent communer*; or the said John to hold his land in N. as his several, without this, that the aforesaid Peter and the others ought to have common there. *Britt.* c. 59. See *Absque hoc*.

**SANS IMPEACHMENT DE WAST.** L. Fr. Without impeachment of waste. *Litt.* sect. 152. See *Absque impetitione vasti*.

**SANS JOUR, Sauns iour.** L. Fr. Without day. *Aler sans jour*; to go without day. *Litt.* sect. 201. See *Sine die*. *Irra quites saunz iour*; shall go quit without day. *Fet Assaver*, § 16.

**SANS NOMBRE.** L. Fr. [Lat. *sine numero*.] Without number; without stint or limit. See *Common sans nombre*.

**SANS PLUS.** L. Fr. Without more; without further words. *Dyer*, 31 b.

**SANS RECOURS.** Fr. Without recourse, (q. v.)

**SANS WASTE.** L. Fr. Without waste. 12 *East*, 209.

**SANS, Sens.** L. Fr. Sense; understanding. *Kelham.*

**SANTZ.** L. Fr. Without. *Santz delay.* *Art. sup. Cart.*

**SANUS.** Lat. Sound. See *Sanæ mentis*.

*Sapiens incipit a fine, et quod primum est in intentione, ultimum est in executione.* A wise man begins at the end, and that which is first in intention is last in execution. 10 *Co.* 25 b. *The case of Sutton's Hos-*

*pital. Finis*, (end,) here has the sense of object. *Id.* See *Co. Litt.* 70 b.

*Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum.* It is the part of a wise judge to think that a thing is permitted to him, only so far as it is committed and entrusted to him. 4 *Inst.* 163. That is, he should keep his jurisdiction within the limits of his commission. *Id.* The word *permissum* is, in Branch's *Principia*, misprinted *premissum*, leading to the following wholly inaccurate and unintelligible translation: "A wise man should consider as much what he premises as what he commits and believes"!

**SARCINA.** L. Lat. In old English law. A pack. *Comb.* 295.

**SARCLO.** L. Lat. A weeding-hook. *Spelman.*

**SARCULATURA.** L. Lat. In old records. Weeding corn. A tenant's service of weeding for the lord. *Cowell.*

**SARPLAR.** In old English law. A pocket or half a sack of wool. *Cowell.*

**SART.** In old English law. A piece of woodland, turned into arable. *Cowell.* See *Assart.*

**SARTARE.** L. Lat. In old records. To clear a place of woods and thickets. *Spelman.* See *To assart.*

**SARUM.** L. Lat. In old records. The city of Salisbury in England. *Spelman.*

**SASINE.** In Scotch law. The symbolical delivery of land, answering to the livery of seisin of the old English law. 4 *Kent's Com.* 459.

**SASSE.** In old English law. A kind of wear with flood-gates, most commonly in cut rivers, [canals?] for the shutting up and letting out the water, as occasion required, for the more ready passing of boats and barges to and fro; a lock; a turnpike; a sluice. *Cowell.*

**SATIO.** Lat. [from *serere*, to sow.] In the civil law. A sowing of seed. One of the modes of gaining property by accession. *Frumenta quæ sata sunt solo cedere intelliguntur*; grains which are sown, are understood to go with the soil, or become a part of it. *Inst.* 2. 1. 32.

**SATISDATIO.** Lat. [from *satisdare*, from *satis*, sufficient, or equivalent, and *dare*, to give.] In the civil law. Security given by a party to an action, as by a defendant, to pay what might be adjudged against him, (*judicatum solvi.*) *Inst.* 4.

11. 3 *Bl. Com.* 291. Properly, security given by sureties or fidejussors. See *Dig.* 2. 8. 1. *Gloss. Cujac.* in *Dig.* 50. 16. 61.

**SATISFACTION.** [Lat. *satisfactio*, from *satisfacere*, from *satis*, enough, and *facere*, to make.] In practice. The making amends for an injury done; the giving an equivalent required by law; payment of a legal debt or demand, usually such as is due by matter of record, as a judgment, mortgage, &c.

The discharging or cancelling a judgment or mortgage, by paying the amount of it, or an amount accepted as sufficient by the party holding it, or by having property taken and sold to an equal amount.

**SATISFACTION PIECE.** In practice. A memorandum in writing, entitled in a cause, stating that satisfaction is acknowledged between the parties, plaintiff and defendant. Upon this being duly acknowledged and filed in the office where the record of the judgment is, the judgment becomes satisfied, and the defendant discharged from it.

*Satius est petere fontes quam sectari rivulos.* It is better to seek the fountains than to follow the streams. 10 *Co.* 113. In the common translations of this maxim or adage, the word *sectari* has been strangely mistaken for *secare*, to cut.

**SAUCES DER MER.** L. Fr. Creeks of the sea. *Kelham.*

**SAULX, Saulices, Sawces.** L. Fr. Sallows; willows. *Kelham.*

**SAUMA, Soma.** L. Lat. [Fr. *saume*; Ital. *soma*; Germ. *somē, somme.*] In old records. A load, pack or burden. *Spelman.*

**SAUMARIUS, Soumarius, Summarius.** L. Lat. In old records. A sumpter-horse or mule; a pack-horse. *Spelman.*

**SAUNKE, Saunk, Saunc.** L. Fr. [from Lat. *sanguis*.] Blood. *Hors del saunke*; out of the blood. *Britt.* c. 68. *Par defaute de saunk*; by failure of blood. *Id.* c. 119.

**SAUNKEFIN.** L. Fr. End of blood; failure of the direct line in successions. *Spelman.* *Cowell.* *Britt.* c. 19.

**SAUNS, Saunz, Sauntz.** L. Fr. Without. *Sauns faire alienacion*; without making alienation. *Britt.* c. 39. *Kelham.* See *Sans. Saunz plus dire*; without more saying. *Yearb. H.* 1 Edw. II. 3.

**SAUTE, Sautie, Sauvtie.** L. Fr. Safety; health. *Kelham.*

SAUVAGINE. L. Fr. Wild animals. *De peissons et de autre sauvagine. Britt. c. 33, fol. 85.*

The wild disposition of an animal, (*fera natura.*) *Mes si ele eschape et repreigne la sauvagine en son natural estate*; but if it escape, and resume its wildness, in its natural estate. *Id. ibid.*

SAUVEMENT. L. Fr. Safely. *Sauvement gardes*; safely kept. *Britt. c. 87.*

SAVAGE. L. Fr. Wild. *Bestes sauvages*; wild animals. Deer so called. *Keilw. 30.*

SAVANT. L. Fr. Saving; knowing. *Kelham.*

To SAVE THE STATUTE OF LIMITATIONS. In practice. To prevent the operation of the statute; to save a debt or demand from being barred by the operation of the statute. *Holthouse.*

SAVER, Savor, Savoer. L. Fr. To know. *Fait à saver; fet assaver*; be it known or understood; (it is a thing to be known.) *Kelham.* See *Fet assavoir.* *Cest à saver*; it is to wit; it is to be known; that is to say. See *C'est assavoir.*

SAVER DEFAULT. L. Fr. In old English practice. To excuse a default. *Termes de la Ley. Cowell.*

SAWCES. In old English law. Wil-lows. *Co. Litt. 4 b.*

SC. An abbreviation of *scilicet.* *Hob. 171.*

SCABINI, *Scabinei, Scabinii.* L. Lat. [*Fr. echevins.*] In old European law. The judges or assessors of the judges in the *mallus*, or court held by the count, (*comes*), or *missus dominicus.* 1 *Robertson's Charles V. Appendix, Note xl.*—Assistants or associates of the count; officers under the count. *Spelman. Esprit des Lois, liv. 28, c. 28.*—The permanent selected judges of the Franks. 1 *Spence's Chancery, 61, note (l.)*—Judges among the Germans, Franks and Lombards, who were held in peculiar esteem. *Spelman.*

This word is found in an English charter granted by the wardens of Lynn in Norfolk, in the reign of Henry VIII. in which they are described as *Scabini.* *Spelman. Cowell.*

SCACCARIUM. L. Lat. In old English law. Exchequer. *Fleta, lib. 2, c. 25. Spelman.* See *Exchequer.*

SCALA. L. Lat. In old English law. Scale; the scale. To pay *ad scalam*, (according to the scale,) was the old way

of paying into the exchequer twenty shillings and sixpence for a pound sterling, the sixpence being superadded to make up the full weight. *Lowndes' Essay on Coin, 4. Hale on Sheriff's Acc. 21. Cowell.*

SCALE. In early American law. To adjust, graduate or value according to a scale. "The court scaled the debt." Marshall, arg. 2 *Wash. (Va.) R. 5, 6.* A term used after the establishment of American independence, to signify a process of adjusting the difference in value between paper money and specie, rendered necessary by the great depreciation of the former. The act of assembly of Virginia of February 10, 1781, establishing a scale of depreciation, and declaring that outstanding current money contracts should be regulated by such scale, as at the date of such contracts, is called an "An act for scaling paper money contracts." 2 *Wash. (Va.) R. [41,] 52. Id. [98, 99,] 127. Id. [103, 104,] 132, 134.*

SCALINGA. L. Lat. In old records. A quarry, or pit, for stones or slates. 2 *Mon. Angl. 130.*

SCAMNUM, (or SCANNUM) CADUCUM. L. Lat. In old records. The cucking-stool, or ducking-stool. *Cowell.*

SCANDAL. In equity practice. The allegation of any thing either in a bill, answer or any other pleading, which is unbecoming the dignity of the court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause. *Wyatt's Pract. Reg. 383. 1 Daniell's Ch. Pr. 397. Story's Eq. Pl. §§ 266, 862.*

SCANDALUM MAGNATUM. L. Lat. In English law. Scandal or slander of great men or nobles. Words spoken in derogation of a peer, a judge, or other great officer of the realm, for which an action lies, though it is now rarely resorted to. 3 *Bl. Com. 123. 3 Steph. Com. 473.*

SCAPELLARE. L. Lat. In old European law. To chop; to chip or hagggle. *Spelman.*

SCAPHIA. Lat. In the Roman law. A boat; a lighter. *Dig. 14. 2. 4, pr. A ship's boat. Id. 6. 1. 3. 1. Id. 21. 2. 44. Loccen. de Jur. Mar. lib. 1, c. 2, § 6.*

SCARA. L. Lat. In old European law. A troop, (*turma*;) a division of an army. A phalanx, (*cuneus*.) *Spelman.*

SCAVAGE, or SCHEWAGE. [L. Lat.

*scaragium* : from Sax. *sceawian*, to show.] In old English law. A tribute exacted of merchants by the owners of fairs, for leave to *show* or offer their wares for sale there. *Spelman. Cowell.*

SCAVER, *Scavoir*. L. Fr. To know. *Scait, scet, sciet* ; knows. *Britt. c. 70. Kelham. Scerent, scerivent, sceuvent* ; know. *Id.* Scavez rien dire p' qui nous ne rendrom' jug't ; know you nothing to say why we should not render judgment? *Yearb. M. 4 Edw. III. 43.*

SCEATTA, *Scætta*. Sax. A Saxon coin, of less denomination than a shilling. *Spelman.*

SCEDULA. L. Lat. In old English law. An escrow. *Dyer, 34 b.*

SCEN. L. Fr. Sense ; knowledge. *Kelham.*

SCEPP. L. Fr. Stock ; a stock. *Kelham.*

SCHEDULA. L. Lat. In old English law. A scroll ; an escrow. *Fleta, lib. 5, c. 9, § 13.*

A paper containing a list of items. *Schedula expensarum* ; a bill of costs. *Clerke's Prax. Cur. Adm. tit. 9.*

SCICHEDULE. [Lat. *schedula*, dimin. of *scheda*, a sheet of parchment or paper.] In practice. A small sheet or scroll ; a sheet of parchment or paper appended to any written instrument, containing a detailed statement of matters generally mentioned and referred to in such instrument.

An inventory, or paper containing an inventory.

SCHETES. In old English law. Usury, so called. *Rot. Parl. 14 Ric. II. Cowell.*

SCHIRA, *Schyra, Shira, Shyra*. L. Lat. [from Sax. *scyran*, to shear, cut or divide.] In old English law. A shire or county. *Spelman.*

SCHIREFF. The old Scotch form of sheriff. *Skene de Verb. Signif.*

SCHIREMAN. [Sax. *scyremôn*.] In Saxon law. An officer having the civil government of a *shire*, or county ; an earl. 1 *Bl. Com.* 398.

"SCHOOL-KEEPING," held to be a "business." 1 *M. & S.* 95. Lord Ellenborough, *Id.* 99. A public business. 36 *Eng. Law & Eq. R.* 83.

"SCHOOL-MASTER," held not to be an addition within the statute of additions. 5 *Taunt.* 759.

SCHOUT. Belg. [from *schuld*, debt.] In Dutch law. An officer of a court who convenes the judges and demands from

them justice for litigating parties. Usually translated *sheriff*. *O'Callaghan's New Netherlands*, i. 101.

The *schout fiscaal* was an important officer in New Netherlands. His duties were equivalent to those performed among us by a sheriff and an attorney-general. *Id. ibid.* 102.

SCIANT PRÆSENTES ET FUTURI. L. Lat. Know [all men] present and to come. *Litt. sect. 372. Bract. fol. 34 b. Fleta, lib. 3, c. 14, § 5.* A form of commencing deeds, of very great antiquity in the common law. Expressed in the French of Britton, *Sachent à toutz ceux que icy sount, et à toutz ceux que avener sount* ; Know all those who are here, and all those who are to come. *Britt. c. 39.*

SCIENDUM EST. Lat. It is to be known, or understood. A phrase frequently used in the civil law, in the commencement of paragraphs or other divisions of a subject, as preliminary to some explanation, or as calling attention to some particular rule. *Sciendum itaque est, omnia fidei-commissa primis temporibus infirma fuisse* ; it is to be known, then, that all trusts were, in their origin, weak. *Inst. 2. 23. 1. In primis igitur sciendum est, opus esse, &c.* ; in the first place, it is to be understood, that it is necessary, &c. *Id. 2. 23. 2. See Dig. 10. 4. 3. 9, 15. Id. 21. 1. 19, pr.* It corresponded with *notandum est*, (it is to be marked or noted.) *Id. 10. 4. 3. 2.* The civilians who wrote in Greek used the corresponding expressions, *εἰδέναι δεῖ*, (it should be known,) and *εἰδέναι χρὴ*. *Dig. 26. 3. 1. 3. Id. 26. 5. 21, pr. Id. 27. 1. 13.* The expression *sciendum* or *sciendum est* occurs frequently in Bracton and Fleta, and corresponds with the L. Fr. *est ascavoir*, or *c'est ascavoir*, constantly used in Littleton and other writers. See *Ascavoir*.

SCIENTER. L. Lat. Knowingly ; with knowledge. *Bract. fol. 48 b. 2 East, 446.* A term used in pleading, to express *knowledge* on the part of a defendant or prosecuted party, of certain facts essential to constitute a valid ground of complaint against him ; and also used as the name of that part of a declaration or indictment in which such knowledge is charged. Thus, in an action for keeping a mischievous animal by which some injury has been done, it must be alleged that the defendant kept it *with knowledge* of its habits or mischievous nature. 2 *Chitt. Pl.* 597. And

in an indictment for passing counterfeit coin, it must be alleged, that the accused did so, *knowing* it to be counterfeit. *Wharton's Prec. of Indict.* 174, 175. This is called, *laying* the action or indictment with a *scienter*.

This term is merely the emphatic word used in the old Latin forms of declarations and indictments, retained in use from its peculiar expressiveness.

**Scienti et volenti non fit injuria.** An injury is not done to one who knows and wills it. An act done to a person with his knowledge and consent, is not an injury. *Bract.* fol. 20.

**SCIENTIA.** Lat. [from *scire*, to know.] Knowledge; information. *Scientia sciolorum est mixta ignorantia.* The knowledge of sciolists is a mixed ignorance. 8 *Co.* 159.

**Scientia utrimque par pares contrahentes facit.** Equal knowledge on both sides makes contracting parties equal. Lord Mansfield, C. J. 3 *Burr.* 1905, 1910. An insured need not mention what the underwriter knows, or what he ought to know. *Id. ibid.* *Broom's Max.* 363, [609.]

**SCILICET.** Lat. [from *scire*, to know, and *licet*, it is permitted.] To wit; that is to say. A word used in pleadings and other instruments, as introductory to a more particular statement of matters previously mentioned in general terms. *Hob.* 171, 172. Commonly abbreviated *sc.* or *ss.* In the old books, *s.* The word *videlicet*, (of similar import,) is now more common. See *Videlicet*.

*Scilicet* radically means, according to its derivation, "You may know," and is closely allied in its form and application to the civil law phrase *sciendum est*, (q. v.) So, in colloquial English, formal explanations of any matter are often introduced by the phrase, "you must know." So, the French phrase *c'est ascavoir* (or *est ascavoir*,) had the double meaning of "it is to be known," and "that is to say," the latter a derivative from the former. And the English "*to wit*," itself, literally signifies "*to know*." See *To wit*, *Wit*.

**SCINTILLA.** Lat. A spark; a remaining particle; the least particle. "A *scintilla* of equity." Henley, Lord Keeper, 1 *W. Bl.* 180. "There is not a *scintilla* of intention upon the face of the will, to show the contrary." Lord Ellenborough, 11 *East*, 322. "Not a *scintilla* of benefit." *Id.* 1 *M. & S.* 509. See 6 *M. & S.* 180.

**SCINTILLA JURIS.** L. Lat. A spark

of right; a remaining particle of right; a latent particle of right or interest. A very small but sufficient portion of the fee simple of an estate, supposed to remain in feoffees to uses, to serve and support contingent uses when they came *in esse*.\* 4 *Kent's Com.* 238—246. 1 *Co.* 120, *Chudleigh's case*.—A possibility of future seisin, to serve future uses. 1 *Steph. Com.* 340, note.—A capacity to receive a future seisin. *Burton's Real Prop.* 57.

Mr. Sugden has observed that the doctrine of *scintilla juris* was first started in Brent's case. *Dyer*, 340 a. *Sugden on Powers*, 13, 14. The words used by *Dyer*, in the case last referred to, are, "*adhuc remanet quædam scintilla juris et tituli, quasi medium quid inter utrosque status, scilicet illa possibilitas futuri usus emergentis, et sic interesse et titulus et non tantum nuda auctoritas seu potestas remanet*;" there still remains some *scintilla* (or spark) of right and title, as a kind of middle or intermediate thing between both estates, to wit, that possibility of a future emerging (or arising) use; and so, an interest and title, and not only a naked authority or power remains.

In 1 *Siderfin's Reports*, 99, where the above passage is quoted, the word *tantum* is erroneously printed *tam*, an error occasioned by a misapprehension of the abbreviation *tm*, used in the edition of *Dyer*, quoted by Mr. Sugden. In an old folio edition of *Dyer*, in French, (London, 1601,) the word is abbreviated *tatu*, which removes all doubt as to the true reading. This edition seems not to have been consulted at the time the note to 1 *Sugden on Powers*, 15, was written.

The phrase *scintilla juris* itself, seems to have been taken from Bracton. *Sed quid dicetur de eo qui nullam omnino seysinam habuit, nec aliquam juris scintillam*; but what shall be said of him who had no seisin at all, nor any spark of right. *Bract.* fol. 310. *Nuda* [*possessio*,] *ubi quis nihil juris habet in re, nec aliquam juris scintillam, sed tantum nudam pedum positionem*; naked possession, where one has no right in a thing, nor any spark of right, but only a mere foothold. *Id.* fol. 39. And see *Fleta*, lib. 4, c. 7, § 2. *Id.* lib. 4, c. 30, § 2.

*Scintilla juris* is used by Lord Coke in the sense of a *spark of law*. 3 *Inst.* 79. 4 *Bl. Com.* 360. Lord Bacon calls it "a conceit." *Read. Uses; Works*, iv. 193.

**Scire debes cum quo contrahis.** You

ought to know with whom you contract or bargain.

**SCIRE FACIAS.** L. Lat. (You cause to know.) In practice. A judicial writ, founded upon some record, and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (in case of a *scire facias* to repeal letters patent,) why the record should not be annulled and vacated. 2 *Arch. Pr.* 86. So called from the words of the writ (when in Latin,) to the sheriff,—*Quod SCIRE FACIAS prefato T. quod sit coram, &c. ostensurus, si quid pro se habeat aut dicere sciât quare, &c.*; that you cause the said T. to know, [or that you give notice to the said T.] that he be before, &c. to show, if he have or know any thing to say for himself, why, &c. *Co. Litt.* 290 b. See *Reg. Jud.* 11, 12, 21, 41.

The most common application of this writ is as a process to revive a judgment after the lapse of a certain time, or on a change of parties, or otherwise to have execution of the judgment, in which cases it is merely a continuation of the original action. 2 *Arch. Pr.* 86. It is used more rarely as a mode of proceeding against special bail on their recognizance, and as a means of repealing letters patent; in which cases it is an original proceeding. *Id. ibid.* It is said by Lord Coke to be "accounted in law in nature of an action," because the defendant may plead to it, and is sometimes expressly called an action. *Co. Litt.* 290 b. 1 *Hill's (N. Y.) R.* 339. Cowen, J. *Id.* 342. See 2 *Burr. Pr.* 164. *United States Digest*, *Scire facias*.

**SCIRE FECI.** L. Lat. (I have caused to know.) In practice. The name given to the sheriff's return to a writ of *scire facias*, that he has caused notice to be given to the party or parties against whom the writ was issued. 2 *Arch. Pr.* 98, 99. *Arch. Forms*, 439. Derived from the emphatic words of the old Latin return.

**SCIREGEMOTE,** (or **SCYREGEMOTE.**) Sax. [from *scyre*, shire, and *gemote*, court.] In Saxon law. The shire mote or county court; the principal court of the Saxons, held twice a year before the bishop and alderman. *Crabb's Hist.* 28. *Spelman*, voc. *Gemotum*.

**Seire leges, non hoc est verba earum tenere, sed vim ac potestatem.** To know the laws, is not to observe their mere words, but their force and power; [that is, the essen-

tial meaning in which their efficacy resides.] *Dig.* 1. 3. 17. 1 *Kent's Com.* 462.

**Seire proprie est rem ratione et per causam cognoscere.** To know properly is to know a thing in its reason, and by its cause. We are truly said to know any thing, where we know the true cause thereof. *Co. Litt.* 183 b.

**SCIREWYTE.** In old English law. A tax or prestation paid to the sheriff for holding the assises or county courts. *Paroch. Ant.* 573. *Cowell*.

**SCISSIO.** Lat. [from *scindere*, to cut.] In old English law. A cutting. *Scissio auricularum*; cropping of the ears. An old punishment. *Fleta*, lib. 1, c. 38, § 10.

*Scissor*; a cutter. *Scissores bursarum*; cut-purses. *Id. ibid.* § 11.

*Scissura*; a cutting. *Scissura bursæ*; purse-cutting. *Id. ibid.*

**SCITO** quod *ut* modus est, *si* conditio, *quia* causa.

Know that *ut* expresses or denotes manner, *si*, condition, *quia*, cause. A rule in the form of a hexameter line, by which the peculiar force and function of the particles *ut*, *si* and *quia*, in old conveyancing, were expressed. *Bract.* fol. 18 b. *Dyer*, 138 b. See *Ut, Si, Quia*.

**SCLANDRE.** L. Fr. In old English law. Slander. *Stat. Westm.* 1, c. 34.

**SCLUSA,** *Slusa, Clusa, Exclusa, Clausa.* L. Lat. In old European law. A place so narrowed by nature or art, as easily to prevent or permit the passage of any thing. *Spelman*.

**SCOT.** [L. Lat. *scottum, scottus, scotta*; from Sax. *sceat*, a part or portion.] In old English law. A tax, or tribute; one's share of a contribution. Or rather, a contribution of several.

Camden, following Matthew of Westminster, defines this word to mean, "that which is gathered together into one heap, from several things," (*illud quod ex diversis rebus in unum acervum aggregatur.*) *Cowell*. *Spelman* observes that it properly signifies what the authors of the middle ages called *conjectus*, (a throwing together,) because it was *thrown together* by several into one, from Sax. *sceote*, to throw or cast, whence *sceotan*, to shoot. It is found associated with the word *lot*, in the laws of William the Conqueror, and other early records; *scot* and *lot*, (or, in the Saxon form, *an hlot & an scote*,) signifying a customary contribution laid upon all subjects, according to their ability. *Cowell. Spelman*, vocc. *Scot, Lot*.

**SCOTALE**, *Scotall*. [L. Lat. *scotalla*, *scotallum*; from Sax. *scot*, money or tribute, and *ale*.] In old English law. A composition or entertainment with *ale*, given for the purpose of extorting money. Called, in old English, *ale shot*, and in Welch, *camortha*. *Spelman*. *Britt.* c. 21. *Cowell*. The word *scotalla* occurs in the Charter of the Forest, (c. 8, or 7,) and is defined by Manwood to be, where any officer of the forest keeps an alehouse within the forest, by color of his office, causing men to come to his house, and there to spend their money, for fear of having displeasure. *Id.* But *Spelman* gives a different reading of the word, with quite a different interpretation, which he prefers.

**SCOTALLA**, *Scotala*, *Scotallum*. L. Lat. In old English law. *Scotall* or *scotale*, (q. v.) *Nullus forestarius vel bedellus de cetero faciat scotallas, vel colligat garbas vel avenam, vel bladum aliquod, vel agnos vel porcellos, vel aliquam collectam faciat*; no forester or beadle shall from henceforth make *scotales*, or collect sheaves or oats or any corn, or lambs or pigs, or make any collection. *Cart. de Forest.* c. 7. See *Fleta*, lib. 2, c. 41, § 25. *Spelman*, voc. *Scotala*.

**SCOTTARE**. L. Lat. In old records. To pay scot, tax or customary dues. *Cowell*.

**SCRAMA**. L. Lat. In old European law. A kind of cutting weapon. *L. Wisigoth.* lib. 9, tit. 2, l. 9. *Spelman*.

**SCRAWL**. A word used in some of the United States for scrawl or scroll, (q. v.) "The word 'seal,' written in a *scrawl* attached to the name of an obligor, makes the instrument a specialty." 2 *Florida R.* 418.

**SCRIBA**. Lat. [from *scribere*, to write.] A scribe; a secretary. *Scriba regis*; a king's secretary; a chancellor. *Spelman*.

**Scribere est agere**. To write is to act. Treasonable words set down in writing amount to overt acts of treason. 2 *Roll. R.* 89. 4 *Bl. Com.* 80. *Broom's Max.* 146, [229.]

**SCRIP**, held not to be goods, wares or merchandize. 16 *Mees. & W.* 66.

**SCRIPT**. [from Lat. *scriptum*, q. v.] In practice. A writing. A paper offered for probate as a will, called a *script*. 3 *Jones' Law R.* 154.

**SCRIPTORIUM**. L. Lat. [from *scribere*, to write.] In old records. A place in monasteries, where writing was done. *Spelman*.

**SCRIPTUM**. Lat. [from *scribere*, to write.] In old conveyancing. A writing; a thing written. *Fleta*, lib. 2, c. 60, § 25. This word, alone, does not import or signify a deed, (that is, an instrument under seal.) 2 *Stra.* 814.

*Scriptum indentatum*; a writing indented; an indenture or deed. *Reynolds, J. Id.* 815.

*Scriptum obligatorium*; a writing obligatory. The technical name of a bond in old pleadings. *T. Raym.* 393. Any writing under seal. *Id. ibid.*

**SCRIPTURA**. Lat. [from *scribere*, to write.] In old English law. The act or fact of writing. *Fleta*, lib. 2, c. 60, § 25.

**SCRIVET'**. In old English practice. *Scruct. Scrivet' finium*; *scruct* of fines. A species of roll used in cases of *habeas corpus*. 3 *How. St. Trials*, 117.

**SCRIVENER**. In practice. One who writes, or copies writings for others. Called an office of confidence. 2 *Rep. in Ch.* 29. As to the office of money scrivener, see 3 *Campb. R.* 538.

**SCRIVER**. L. Fr. To write. *Kelham*.

**SCROLL**, *Scrowl*. [L. Fr. *escrowe*, *escrovet*.] In practice. A paper or parchment containing some writing, and rolled up so as to conceal it; an escrow. Littleton speaks of *petits escrovet*s, (little scrolls,) used for drawing lots between co-parceners. *Litt. sect.* 246. See *Escrow*. The papers on which jurors' names are written, and so drawn out of the box, are still sometimes called *scrolls*. 8 *Iredell's (N. C.) R.* 35.

A flourish with a pen, at the end of a signature, or a circle of ink, or other mark with a pen, representing a seal, is allowed in some of the United States as a valid substitute for a seal. 4 *Kent's Com.* 453, and notes. 4 *Greenl. Cruise's Dig.* [27,] 36, 38, note. This is sometimes called a *scrawl*. *Swan's Statutes of Ohio*, 1854, chap. 102. 2 *Hilliard's Real Prop.* 280, [296.]

**SCRUET-ROLL**, (or **SCRUET FINIUM**.) In old practice. A species of roll or record, on which the bail on *habeas corpus* was entered. 3 *St. Trials*, 134, arg.

**SCRUTATOR**. Lat. In old English law. A searcher or bailiff of a river; a water-bailiff, whose business was to look to the king's rights, as his wrecks, his floatsan, jetsan, water-strays, royal fishes. *Hale de Jur. Mar.* pars 1, c. 5.

**SCTUM**. A common abbreviation, or

contraction, in the civil law, of *senatus consultum*. (q. v.)

**SCULDASIUS**, *Sculdais*. L. Lat. In old European law. A kind of judicial officer; a judge's assistant, combining ministerial with judicial duties. *Spelman*. *LL. Longobard.* lib. 1, tit. 2, l. 2. *Id.* tit. 14, l. 7.

**SCURIA**. L. Lat. In old European law. A barn or stable. *LL. Alaman.* tit. 82, § 2. *Spelman*.

**SC'US**. A contraction of *sanctus*. 1 *Instr. Cler.* 12.

**SCUSSUS**. L. Lat. In old European law. Shaken or beaten out, (*excussus*;) threshed, as grain. *Spelman*.

**SCUTAGE**. [L. Lat. *scutagium*, from *scutum*, a shield; L. Fr. *escuage*, from *escu*, a shield; Sax. *scild-penig*, shield-money.] In old English law. A sum of money assessed upon those tenants by knight-service who had made default in doing their service, (that is, had not followed their lord in person to the wars, nor found a substitute) being so much for each shield, (*scutum*.) *Reg. Orig.* 88.

A pecuniary aid or tribute originally reserved by particular lords, instead or in lieu of personal service, varying in amount according to the expenditure which the lord had to incur in his personal attendance upon the king in his wars. See *Wright on Tenures*, 121—134.

A pecuniary composition or commutation made by a tenant by knight-service, in lieu of actual service. 2 *Bl. Com.* 74. See *Bract.* fol. 36, 37, 77 b.

**SCUTAGIUM**. L. Lat. [from *scutum*, a shield.] In old English law. Scutage, (q. v.) Scutagium [*nominatur*] *quia talis præstatio pertinet ad scutum quod assumitur ad servitium militare*; it is called scutage because such payment belongs to the shield which is borne for military service. *Bract.* fol. 36. *Id.* fol. 77 b.

**SCUTE**, *Skute*. [Lat. *scutum*.] A French coin of gold, coined A. D. 1427, of the value of 3s. 4d. *Fortescue de L. L. Angliæ*, c. 29, note.

**SCUTELRIA**. L. Lat. In old English law. A scullery. *Fleta*, lib. 2, c. 18.

**SCUTIFER**. L. Lat. In old records. Esquire; the same as *armiger*. *Spelman*.

**SCUTUM**. L. Lat. In old English law. A pent-house or awning; literally, a shield, or shelter. By the Assise of Measures, 9 *Ric. I.* it was forbidden to all merchants throughout England, to spread over their

shop windows red or black cloths or awnings (*scuta*;) or any other things by which the sight of purchasers is often deceived in selecting a good cloth. *Spelman*.

**SCUTUM ARMORUM**. L. Lat. In old records. A shield or coat of arms. *Cowell*.

**SCYRA**. L. Lat. In old English law. Shire; county; the inhabitants of a county. Writ cited, *Hale's Hist. Com. Law*, 119.

**SE, Si**. L. Fr. If; whether; his; but; except. *Kelham*.

**SÊ DEFENDENDO**. L. Lat. [L. Fr. *soy defendaut*.] In defending himself; in self defence. *Fleta*, lib. 1, c. 23, § 15. See *Homicide se defendendo*.

**SEA-FISH**, held not to be *shell-fish*. 2 *M. & S.* 568.

**SEA-GREENS**. In Scotch law. Those grounds which are over-flowed in spring tides. *Bell's Dict.* Held to be private property. *Id.* Land washed by the sea only at high spring tides. 1 *Bell's Ap. Cas.* 512, arg.

**SEA-LETTER**. In international law. A document which neutral merchant vessels are bound to carry in time of war, as an evidence of nationality, and for the purpose of protection against belligerent powers.\* 4 *Kent's Com.* 157. In form, it is a permission from the neutral state to the master of the vessel, to proceed on the intended voyage, and usually contains his name and residence, the name, description and destination of the vessel, with such other matter as the local law and practice require. *Wheaton on Cap.* 65. 5 *East*, 398. *Jacobsen's Sea Laws*, (Am. ed. 1818,) 69, note. In American law, the term *sea-letter* has generally been used as synonymous with *passport*, (q. v.) *Id.* 67, note. 1 *Kent's Com.* 157. *Wheaton on Cap.* 65. According to Mr. Marshall, however, the *sea-letter* (or *sea-brief*, as it is otherwise termed,) is a different document from the passport, relating to the nature and quantity of the cargo, the place from whence it comes, and its destination. 1 *Marshall on Ins.* 317. But see the edition of 1810, p. 406 b. And, in New-York, it has formerly been held to be the same thing with the *certificate of property or ownership*. 2 *Johns. R.* 531. But see 1 *Id.* 192. *Jacobsen's Sea Laws*, 66—69, note, (Am. ed.)

**SEA-SERVICES**. See 3 *How. State Trials*, 869.

**SEA-SHORE**. [Lat. *littus maris*.] The

ground between the ordinary high and low water mark. *Hale de Jur. Maris*, pars 1, c. 4, 5. 3 *Kent's Com.* 431. See *Littus maris*. According to the Roman law, the shore included the land as high up as the largest wave extended in winter. See *Litus*. And this definition has been substantially adopted in the Civil Code of Louisiana. Art. 442.

**SEA-WORTHY.** In insurance law. In a condition to perform a voyage. 2 *Steph. Com.* 177. A warranty of sea-worthiness means that the vessel is competent to resist the ordinary attacks of wind and weather, and is competently equipped and manned for the voyage, with a sufficient crew, and with sufficient means to sustain them, and with a captain of general good character and nautical skill. 3 *Kent's Com.* 287, and note. See 1 *Arnould on Ins.* 652. "To constitute sea-worthiness of the hull of a vessel in respect to cargo, the hull must be so tight, staunch and strong, as to be competent to resist all ordinary action of the sea, and to prosecute and complete the voyage without damage to the cargo under deck." Curtis, J. 19 *Howard's R.* 167.

**SEAL.** L. Fr. and Eng. [Lat. *sigillum, signum*.] In conveyancing. An impression upon wax or wafer, or some other tenacious substance, capable of being impressed. 4 *Kent's Com.* 452. 5 *Johns. R.* 239. Bronson, J. 1 *Denio's R.* 376. 2 *Hill's R.* 227. 3 *Id.* 493. Lord Coke defines a seal to be wax impressed, (*cera impressa*), or wax with an impression, adding that wax without an impression is not a seal, (*cera sine impressione non est sigillum*.) 3 *Inst.* 169. This is the well-settled definition of the common law, and it has been adopted in several of the United States. In New-York, it has been decided that an impression upon paper alone is not a seal, except where it has been made so by statute. Bronson, J. 1 *Denio's R.* 376. 2 *Hill's R.* 227. 3 *Id.* 493. But see 13 *Howard's R.* 472. The same rule prevails generally in the Eastern States. 4 *Greenl. Cruise's Dig.* [27,] 36, 38, note. See 8 *Howard's R.* 451, 464; Woodbury, J. But in the Southern and Western States, from New-Jersey inclusive, the impression upon wax has been disused, and a scroll, scrawl or flourish with a pen, substituted for many purposes, in its place. See *Id. ibid.* 4 *Kent's Com.* 452, 453, and note. 4 *Texas R.* 231. 2 *Hilliard's Real Prop.* 280, [295, 296.] See *Scroll*.

**SEAL.** [Lat. *sigillum, signum*.] A plate or disk of metal, usually of circular form, having some device engraved upon it, with which an impression may be made on wax or other substance, on paper or parchment, for the purpose of authentication. See *Merlin Repert.* mot *Sceau*. Of this description are the seals of a government, the seals of courts, of public notaries, and other public officers.

*Private* seals are also engraved on other materials, such as precious stones; but the use of these in the execution of instruments is comparatively infrequent, and of far less importance than formerly. When sealing was the principal formality in the execution of instruments, the seal used by a donor or grantor was emphatically and literally *his*, that is, it was his private seal, bearing some peculiar device by which it was known, so that the deed or charter upon which it was impressed was by that circumstance known to have been executed by him. Hence the importance attached to the possession of these private seals, which appears in various ancient records. In one of the Clause Rolls of 8 Edw. I. (m. 3, in dorso,) it is recorded that one Henry de Pergount came into the Chancery, and publicly declared that he had lost his seal, and that if any instrument should be found sealed with that seal after that date, it was of no value or moment. *Blount*. In another instrument, dated at Drakelew, in the 18th year of Richard II. one John de Gresley makes known to all Christian people, that he has not had possession of his seal for a whole year last past, and being in good memory and sound mind, gives notice that he disclaims and totally denies any writings sealed with his seal from the time aforesaid until the day when his said seal should be restored. *Blount*, voc. *Sigillum*. And according to Britton, it was customary in such cases, to have public notice of the loss given in churches and market places. *Britt.* c. 28. And see *Bract.* fol. 15, 38.

**SEAL.** In English practice. The sitting of a court. See 1 *P. Wms.* 523. 3 *Id.* 240.

**SEALED AND DELIVERED.** In conveyancing. The common formula of attestation of deeds and other instruments, written immediately over the witnesses' names. This has been retained without change from the old practice, when *sealing alone*, without signing, constituted a suffi-

cient execution or authentication. 2 *Bl. Com.* 306. See 15 *Ohio R.* 107.

In England, it has been held that the words "sealed and delivered," in an attestation, does not import *signing*. 5 *M. & S.* 581. 3 *Id.* 512. 4 *Taunt.* 213. But the contrary has recently been held in the Supreme Court of the United States. 8 *Howard's R.* 10, citing 6 *M. & Gr.* 386.

SEALX, *Seaux*. L. Fr. Seals. *Britt. c. 4. De fauseours de sealx, et de monoye. Id.*

SEAMAN. [Lat. *nauta*.] A mariner; one whose business is navigation; a person who works, or aids in navigating a vessel, a sailor.\* See 3 *Kent's Com.* 176. See *Nauta*.

In a large sense, this term includes all persons who do duty on board of a ship, and are instrumental to her navigation. *Roccus de Nav. & Naulo*, Note ix. See *Crew*.

SEARCH, RIGHT OF. In international law. The right of belligerent powers to examine and search private merchant vessels at sea, for enemy's property, and articles contraband of war.\* 1 *Kent's Com.* 153. It is generally limited to an inspection of the ship's papers, or the documentary proofs of the property on board. This is wholly distinct from what is termed the *right of visit*, which is conceded for the sole purpose of ascertaining the real character of a vessel sailing under suspicious circumstances. *Id. ibid.* note. The latter right has been termed by the Supreme Court of the United States, the *right of approach*. 11 *Wheaton's R.* 1, 43. In the recent diplomatic correspondence between the governments of Great Britain and the United States, the distinction between the right of *visit* and that of *search* has been denied on the part of the latter.

SEARCH WARRANT. In criminal law. A warrant granted by a justice or magistrate, upon the oath or affirmation of a party, authorizing the search of premises, usually for goods stolen, but sometimes for other purposes. 2 *Chitt. Gen. Pr.* 179, 180. 1 *N. Y. Rev. St.* [93,] 84, § 11. 2 *Id.* [746,] 625, §§ 25—28. *Id.* [149,] 83, § 5. 1 *Id.* [125, § 54,] 115, § 59.

SEAWANT, *Seewan*, *Zeawan*. In old American law. The Dutch name for *wampum*, or Indian money, which consisted of perforated beads, (white, and black or purple,) manufactured from the inside of shells, and strung together. See *O'Calla-*

*ghan's N. Netherlands*, i. 60, 61. *Id.* ii. 543.

SEAUPWERPE, *Seawerpe*. Sax. [from *sæ*, sea, and *upwerpen*, to throw up.] In old records. Wreck; that which is cast up by the sea. (Lat. *jactura maris*; Fr. *varech*.) *Spelman*.

SECOND DELIVERANCE, *Writ of*. [L. Lat. *breve de secunda deliberatione*.] In practice. A writ allowed a plaintiff in replevin, where the defendant has obtained judgment for return of the goods, by default or nonsuit, in order to have the same distress again delivered to him, on giving the same security as before. 3 *Bl. Com.* 150. 3 *Steph. Com.* 668. This writ has been formally abolished in New-York. 2 *Rev. St.* [533,] 439, § 63.

SECOND SURCHARGE. In English law. The surcharge of a common a second time, by the same defendant against whom the common was before admeasured; and for which the *writ of second surcharge* was given by the statute of Westminster, 2. 3 *Bl. Com.* 239.

SECONDARY. In English practice. An officer of the courts of King's Bench and Common Pleas; so called, because he was *second* or next to the chief officer. In the King's Bench he was called Master of the King's Bench office, and was a deputy of the prothonotary or chief clerk. 1 *Arch. Pr.* 11, 12. By statutes 7 Will. IV. and 1 Vict. c. 30, the office of secondary was abolished.

SECONDARY CONVEYANCES. The name given to that class of conveyances which pre-suppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore or transfer the interest granted by such original conveyance. 2 *Bl. Com.* 324. Otherwise termed *derivative conveyances*, (q. v.)

SECONDARY EVIDENCE. In practice. The next best evidence that can be given of the contents of an instrument or writing, where the best possible evidence the nature of the case will admit (that is, the instrument or writing itself,) cannot be produced, as where it has been lost or destroyed, or withheld by the opposite party.\* *Arch. Pl. & Evid.* 373. Parol evidence is frequently made use of for this purpose. See 9 *Wheaton's R.* 483. *Id.* 581. *United States Digest*, Evidence.

SECTA. L. Lat. In old English practice. Suit. A number of persons which a plaintiff produced in court, immediately

after making his count or declaration, for the purpose of confirming his allegations by their testimony, before the defendant pleaded. *Et inde statim producat sectam sufficientem, duos ad minus, vel tres, vel plures, si possit*; and thereupon he should immediately produce a sufficient *suit*, two persons, at the least, or three or more, if he can. *Bract.* fol. 410. See *Id.* 214 b, 400 b. *Fleta*, lib. 2, c. 47, §§ 25, 28, 38. *Id.* c. 55, § 2. *Id.* c. 63, §§ 10, 12. Called *secta*, (from *sequi*, to follow,) because they were usually the plaintiff's *followers* or retainers, (*domestici et familiares*.) 3 *Bl. Com.* 295. *Bract.* fol. 214 b, 400 b. This production of *suit* became a mere form as early as the reign of Edward II. but the formula by which it was expressed,—“*Et inde producit sectam*,” continued to be retained on the record, and in this way came to be used as the concluding clause of the plaintiff's declaration; though, in the modern forms, it is translated, (with reference to another meaning of *secta*,) “And thereupon he *brings suit*,” or, “And therefore he *brings his suit*,” &c. *Steph. Pl.* 429, 430. 3 *Bl. Com.* 295. *Spelman* seems to have overlooked this meaning of the word.

Pursuit of a felon. *Et sic quod fiat secta de terra in terram, cum omni diligentia, donec malefactores comprehendantur*; and so that *suit* (or *pursuit*) be made from land to land, (from one lord's land to another's) with all diligence, until the malefactors be taken. *Bract.* 116. *Recens secta*; fresh *pursuit*. *Fleta*, lib. 1, c. 24, § 3.

A *suit* or *action*; the prosecution, or following up of one's right at law. *Spelman. Stat. Westm.* 2, c. 40. *Secta est pugna civilis; sicut actores armantur actionibus, et quasi accinguntur gladiis, ita rei [è contra,] muniuntur exceptionibus, et defenduntur quasi clypeis*. A *suit* is a civil battle; as plaintiffs are armed with actions, and girded [with them] as it were, with swords, so defendants, on the other hand, are guarded with exceptions, [pleas or defences,] and defended [with them] as it were, with shields. *Hob.* 20. This, with the exception of the words *secta est pugna civilis*, is a quotation from *Bracton. Bract.* fol. 399 b.

A feudal service, by which a tenant was bound to attend his lord's court. See *Secta curiæ*.

A customary service on the part of a tenant, to grind his grain at his lord's mill. See *Secta ad molendinum*.

In old records. A suit of clothes. *Cowell. Spelman*.

SECTA AD MOLENDINUM. L. Lat. [L. Fr. *sute à molyn.*] In old English law. Suit at mill; suit to mill; the customary service of doing *suit* to another's mill. *Hale's Anal.* sect. xlii. A service which was due by usage time out of mind, from the persons resident in a particular place, of carrying their corn to a certain mill to be ground. 3 *Bl. Com.* 235. The writ *de secta ad molendinum* was given as a remedy for the withdrawal of this service. *Id. ibid.*

SECTA AD FURNUM. L. Lat. In old English law. Suit due to a man's public oven or bake-house. 3 *Bl. Com.* 235.

SECTA AD TORRALE. L. Lat. In old English law. Suit due to a man's kiln or malt-house. 3 *Bl. Com.* 235.

SECTA CURLÆ. L. Lat. In feudal and old English law. Suit of court; suit to court; the service of following the lord in his court, or of attending his court. A service which all feudal tenants were bound to perform; the object of such attendance being to answer such complaints as might be alleged against themselves, as well as to form a jury or homage for the trial of their fellow tenants.\* 2 *Bl. Com.* 54. *Hale's Anal.* sect. xlii.

SECTATOR. L. Lat. [from *secta*, suit.] In old English law. A suitor; one who was bound to do suit, especially suit at court. The *seclatores*, or suitors of the courts, were the judges who transacted the business. *Worthington on Juries*, 19. See *Fleta*, lib. 2, c. 2, § 13; c. 53, § 1.

SECTORES. Lat. In the Roman law. Purchasers at auction, or public sales. *Babington on Auctions*, 2. Properly, the purchasers of confiscated property. *Adam's Rom. Ant.* 49.

SECUNDUM. Lat. In the civil and common law. According to. *Secundum bonos mores*; according to good usages; according to established custom; regularly; orderly. *Calv. Lex. Secundum quantitatem terræ*; according to the quantity of land. *Plowd.* 10. *Secundum æquum et bonum*; according to what is just and good. 13 *East*, 419. *Secundum consuetudinem husbandriæ manerii*; according to the custom of husbandry of the manor. 7 *Id.* 409.

For; in favor of; (*pro.*) *Calv. Lex.*

Near; (*prope.*) *Secundum ripam*; near

the bank. *Id. Secundum parietem*; near the wall. *Id.*

**SECUNDUM ALLEGATA ET PROBATA.** Lat. According to the things alleged and proved; according to the allegations and proofs. 1 *Sumner's R.* 375. "Courts and juries cannot do otherwise than decide *secundum allegata et probata* in each particular case." Lord Ellenborough, 15 *East*, 81. See 3 *Taunt.* 30.

**SECUNDUM FORMAM STATUTI.** Lat. According to the form of the statute. This phrase is adduced by Sir W. Blackstone to show the inferiority of the English language to the Latin, in point of conciseness; seven English words being necessary to express the meaning of three Latin. 3 *Bl. Com.* 323, and note. The phrase *secundum statutum* is found in the civil law. *Calv. Lex.*

**SECUNDUM LEGEM COMMUNEM.** L. Lat. According to the common law. *Fleta*, lib. 2, c. 2, § 13. *Non secundum legem communem, sed secundum suas consuetudines diu obtentas*; not according to the common law, but according to their own long established customs. *Id. ibid.*

**SECUNDUM NATURAM.** Lat. According to nature; natural. *Secundum naturam est commoda ejusque rei eum sequi, quem sequentur incommoda.* It is according to nature that the advantages of any thing should attach to him to whom the disadvantages attach. *Dig.* 50. 17. 10.

**SECUNDUM NORMAM LEGIS.** Lat. According to the rule of law; by the intendment and rule of law. *Bacon's Arg.* Low's case; *Works*, iv. 234.

**SECUNDUM SUBJECTAM MATERIAM.** L. Lat. According to the subject matter. 1 *Bl. Com.* 229. All agreements must be construed *secundum subjectam materiam*, if the matter will bear it. 2 *Mod.* 80, arg. Delivery must be *secundum subjectam materiam*. 2 *Kent's Com.* 439.

**SECURUS.** Lat. Secure; safe or sure. See *Si te fecerit securum*.

**SECURITAS.** Lat. [from *securus*, q. v.] In old English law. Security; surety. *Capta securitate à creditore de proseguendo*; having taken security from the creditor to prosecute. *Fleta*, lib. 2, c. 60, § 33. See *infra*.

In the civil law. An acquittance, or release, (*apocha*.) *Spelman. Calv. Lex.*

**SECURITATE PACIS, Breve De.** L. Lat. In old English practice. Writ of

security of the peace. A writ which lay for one who was in fear of some bodily harm from another; as where another had threatened to kill, beat or assault him. *F. N. B.* 79 G. Called, in the Register, *breve de minis*, a writ of threats, or in case of threats. *Reg. Orig.* 88 b.

**SECURITY.** [Lat. *securitas*, q. v.] That which makes secure. An instrument given to secure the performance of an act or contract.

A surety; a person bound by such an instrument. But *surety* is the more proper term in this application.

**SECURITY FOR COSTS.** In practice. A security which a defendant in an action may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs as may be awarded to the defendant. 1 *Tidd's Pr.* 534. 2 *Arch. Pr.* 213. 1 *Burr. Pr.* 116.

*Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus.* Matters entrusted to several are more securely dispatched, and [several] eyes see more than [one] eye. 4 *Co.* 46 a.

**SECUS.** Lat. Otherwise, (*aliter*.) 12 *Mod.* 229. 1 *P. Wms.* 447. See *Aliter*. Amiss; contrary. *Calv. Lex.*

**SED NON ALLOCATUR.** L. Lat. But it is not allowed. A phrase used in the old reports, after giving the argument of counsel, where the court is *contra*. *Latch*, 106. "It was argued," &c. "It was insisted," &c. "*Sed non allocatur*." *Com.* 329. *Id.* 576, 577. "*Sed non allocatur*, because it has been otherwise adjudged." *Latch*, 171. See *Allocatur*.

**SED PER CURIAM.** L. Lat. But by the court. 2 *P. Wms.* 24, 25.

**SEDATO ANIMO.** L. Lat. With settled purpose. 5 *Mod.* 291.

**SEDENTE CURIA.** L. Lat. The court sitting; during the sitting of the court.

**SEDERE.** Lat. To sit, as a court, or the judges of a court. See *Sedente curia*. Bracton uses *residere*.

In the civil law. To be satisfactory to a judge, (*placere*.) *Si hoc judici sederit*; if this be approved by the judge. *Dig.* 2. 8. 7. 2.

**SEDERUNT.** L. Lat. (They sat.) In Scotch law. The session or sitting of a court. See *Acts of sederunt*.

**SEDES.** Lat. A see; the dignity of a bishop. 3 *Steph. Com.* 65.

**SEDITIO.** Lat. [from *seorsum*, apart and *ire*, to go.] In the civil law. Disturb-

ance of the public tranquillity, (*quietis publicæ perturbatio*.) See *Cod.* 9. 30. 1.

In old English law. Sedition; treason. *Glanv.* lib. 1, c. 2. 1 *Hale's P. C.* 77, note.

**SEDITION.** [from *seditio*, q. v.] In criminal law. An offence against the government of a country, not capital, and not amounting to treason, consisting of attempts made by meetings, or by speeches or publications, to disturb the tranquillity of the state, or to excite discontent against the government.\* It is of the like tendency with treason, but without the overt acts which are essential to constitute the latter crime. *Brande.*

Sedition, (*seditio*), is used by the oldest writers on English law, (*Glanville*, *Bracton* and *Hengham*), in the sense of treason, and *seditio* continued to be the technical word in legal proceedings until the term *proditio* prevailed in its room. In the time of Sir Matthew Hale, sedition had lost this ancient sense, which accounts for the comparative disuse of the term in modern English law, and its entire omission in some of the dictionaries and standard treatises. 1 *Hale's P. C.* 77, and note. For a minute discussion of its meaning, with a copious reference to authorities, see 3 *Howell's State Trials*, 242, 243, 244, 248, 249, 254, 261, 267, 279, 283, 284.

**SEDUCTION.** [from Lat. *seductio*, from *seducere*, to draw aside.] The debauching of a woman; the offence of inducing a woman to consent to unlawful intercourse. See 3 *Bl. Com.* 140. 3 *Steph. Com.* 540.

**SEE.** L. Fr. Seat. *Kelham.*

**SEEL.** L. Fr. In old English law. Seal; a seal. *Le seel est consut' et glué al fait*; the seal is sewed to and glued to the deed. *Yearb.* M. 7 Hen. VI. 27.

**SEHOMSOKNE.** A word in *Fleta*, which, in the errata to the edition of 1647, is corrected *sahomsokne*. *Fleta*, lib. 1, . 34, § 8. From the context, it seems to be a misprint for *homsokne*, or *hamsokne*, (q. v.)

**SEL.** L. Fr. Him; his; them. *Kelham.*

**SEIGNEUR.** Fr. and L. Fr. In old English law. Lord; a lord. Used, also, in the sense of owner or master, (*dominus*.) See *Barringt. Obs. Stat.* 286, 287.

**SEIGNIORESS.** In old English law. A female superior; a lady. *Perk.* c. 6, s. 462.

**SEIGNIORY.** [L. Fr. *seignioury*; Fr. *seigneurie*; L. Lat. *dominium*, *dominium*.]

In feudal and English law. Lordship; the estate which a lord had in the land held by his tenant; the ultimate property retained by the lord. See *Dominicum*.

A lordship or manor. *Cowell.*

**SEIGNIOUR.** L. Fr. [Lat. *dominus*.] Lord; a lord. *Britt.* c. 68.

**SEISED.** This word excludes chattels. *Bac. Read. Uses; Works*, iv. 189. Anciently, however, it was applied to personal property. See *Seisi*.

"Seised," in the New-York statutes of escheats, construed. 3 *Comstock's R.* 294.

**SEISER.** L. Fr. To take; to take hold of. *Seiser et tener*; to take and hold. *Britt.* c. 40.

**SEISI.** L. Fr. In old English law. Seised; possessed. *Seisi de deux juments*; seised of two beasts. *Yearb.* M. 4 Edw. III. 11.

**SEISIARE.** L. Lat. In old English law. To seize. *Nos vero, vel ballivi nostri non seisiemus terram aliquam nec redditum pro debito aliquo*; but we or our bailiffs will not seize any land nor rent for any debt. *Mag. Cart.* c. 8.

**SEISIE.** L. Fr. [from *seiser*, q. v.] In old English law. Seised. Called by Lord Coke, "a word of art, and in pleading only applied to a freehold at least, as *posseste*, (possessed,) is, for distinction sake, to a chattel real or personal." *Co. Litt.* 200 b, 17 a. *Litt.* sect. 324. See *Seisi*, *Seised*.

**SEISIN.** [L. Fr. *seisine*, from *seiser*, *saisir*, to seize; L. Lat. *seisina*, *seysina*, q. v.] Possession; possession of land; possession of an estate of freehold in lands. *Co. Litt.* 153 a. 2 *Crabb's Real Prop.* 1000, § 2374.

In its feudal sense, actual corporal possession of land;\* investiture. *Spelman.* The ownership of a feudal tenant. 1 *Spence's Chancery*, 135, note. "Seisin is a technical term to denote the completion of that investiture by which a tenant was admitted into the tenure, and without which, no freehold could be constituted or pass." Lord Mansfield, 1 *Burr.* 60, 107. See *Seisina*, *Seysina*.

*Seisin* is properly applied to freehold, possession to goods and chattels, although sometimes the one is used instead of the other. *Co. Litt.* 17 a. *Seisin in deed* is actual possession of the freehold; *seisin in law* is a legal right to such possession. 4 *Kent's Com.* 386, note. In some of the United States, *seisin* means merely ownership, and the distinction between *seisin* in

deed and in law is not known in practice. 1 *Hilliard's Real Prop.* 82, 83, [41, 42.]

SEISINA, *Seysina, Saisina*. L. Lat. [from L. Fr. *seisine*, q. v.] In old English law. Seisin; possession of a freehold estate. *Fleta*, lib. 4, c. 7, §§ 2, 3.

Seisina facit stipitem. Seisin makes the stock. 2 *Bl. Com.* 209. Actual seisin of a person makes him the root or stock from which all future inheritance by right of blood must be derived. *Id. ibid.* This maxim has been, in effect, discarded in England, by the Inheritance Act, 3 & 4 Will. IV. c. 106, which establishes in every case the rule that descent shall be traced from the purchaser. 1 *Steph. Com.* 367. *Broom's Max.* 226—229, [401, 404.] It is abrogated, also, in most of the United States. 4 *Kent's Com.* 388, 389. 13 *Georgia R.* 238.

SEISIRE. L. Lat. In old English law. To take; to be seised. *Seisitus*; seised. *Cro. Jac.* 634. See *Seysire*.

SEIZURE. Capture. "Every capture is a seizure." Lord Ellenborough, 15 *East*, 13.

SELDA. L. Lat. In old English law. A window; a shop-window. *Assis. Mensur.* 9 *Ric.* 1. *Spelman*.

A shop, shed or stall. *Cowell*.

A wood of willows, or withies. *Co. Litt.* 4 b.

SELECTI JUDICES. Lat. In the Roman law. Selected judges; persons chosen by lot, out of a larger number, to act as *judices* in criminal cases. *Hallifax, Anal.* b. 3, c. 13, num. 4, 20. *Adam's Rom. Ant.* 276, 280. The points of resemblance between these *judices* and the *jurors* of the common law, have been particularly noticed by Blackstone, but, as remarked by Dr. Hallifax, his observations on this head would have been better placed, if inserted in that part of the commentaries which treats of criminal proceedings. 3 *Bl. Com.* 366. The *selecti judices* were exclusively used in what were termed *publica judicia*, or criminal trials, and not at all in the trial of civil causes. *Hall. Anal.* b. 3, c. 13, num. 31, note.

SELEZ. L. Fr. Saddled. *Selez e enfrenez*, saddled and bridled. *LL. Gul. Cong.* 1. 22.

SELF DEFENCE. In criminal law. The protection of one's person or property against some injury attempted by another. The right of such protection. An excuse for the use of force in resisting an attack

on the person, and especially for killing an assailant. See *Wharton's Am. Crim. Law*, §§ 1019—1026.

SELI. L. Fr. Of this; this. *Kelham*. A corruption of *celui*.

SELIO. Lat. [L. Fr. *selion*, from Fr. *seillon*, ground raised between two furrows, from Sax. *sul*, or *syl*, a plough.] In old English law. A selion or ridge of land, containing no certain quantity, but sometimes more and sometimes less. *Spelman. Co. Litt.* 5 b. *Cowell*.

SEMB. An abbreviation of *semble*, (q. v.)

SEMBLABLE. L. Fr. Similar; like. *Britt.* c. 66.

SEMBLE. L. Fr. Seems; it seems. A term used in the books, expressive of an opinion on some point not definitely settled; or expressive of an opinion as to the application or bearing of some decision upon a particular point. Used by the reporters of cases, where they are not confident as to the ruling of the court on a particular point.

In the older books, it is constantly used by counsel and judges, on argument, expressive of an opinion. *Il semble à moy*; it seems to me; I think. *Dyer*, 10. See *Id.* 13, 14. Shelley *semble le feffement bone*; Shelley thought the feoffment good. *Id.* 33. It is used also to express an unsettled opinion of the court. *Semble per curiam que n'est bone; sed advisari volunt*; it seems, by the court, that it is not good; but they will be advised. *Freem.* 247.

SEMBLEMENT. L. Fr. [Lat. *similiter*.] Likewise. 11 *Mod.* 218.

SEME. O. Eng. [L. Lat. *summa*.] In old records. A horse-load. *Cowell*.

SEMER. L. Fr. To sow. *Seme*; sown. *Britt.* fol. 147 b. *Yearb.* T. 4 Edw. III. 7.

SEMESTRIS, *Semestre*. Lat. [from *sex*, six, and *mensis*, month.] Of, or for six months. *Dig.* 27. 1. 41. *Stat. Westm.* 2, c. 5. 2 *Inst.* 361.

SEMI-MATRIMONIUM. Lat. In the Roman law. Half-marriage. Concubinage was so called. *Tayl. Civ. Law*, 273.

SEMINARE. Lat. [from *semen*, seed.] To sow. *Tempus seminandi*; time of sowing; seed-time. *Fleta*, lib. 2, c. 73, §§ 2, 13.

SEMINARIUM. Lat. [from *semen*, seed.] In the civil law. A nursery of trees. *Dig.* 7. 1. 9. 6. *Id.* 47. 7. 3. 4.

"SEMINARY," held in New-York, to

import an *incorporated* institution. 3 *Kernan's R.* 220. The word is said to have "not acquired any definite and fixed legal meaning." Hand, *J. Id.* 229.

**SEMI-PLENA PROBATIO.** Lat. In the civil law. Half-full proof; half-proof. 3 *Bl. Com.* 370. See *Half-proof*.

**SEMITA.** L. Lat. In old English law. A path. *Fleta*, lib. 2, c. 52, § 20.

**SEMPER.** Lat. Always. *Semper in dubiis benigniora præferenda sunt.* In doubtful cases, the more favorable constructions are always to be preferred. *Dig.* 50. 17. 56.

*Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est.* In doubtful cases, such a course should be taken that a contract made *bona fide* should be in the safest condition, [most carefully upheld] unless when it has been openly made against law. *Dig.* 34. 5. 21.

*Semper in obscuris, quod minimum est, sequimur.* In cases of obscurity we always follow that which is the least. *Dig.* 50. 17. 9. See *In obscuris, &c.*

*Semper in stipulationibus, et in ceteris contractibus, id sequimur quod actum est.* In stipulations and in other contracts, we follow that which was done, [we are governed by the actual state of the facts.] *Dig.* 50. 17. 34.

*Semper ita fiat relatio, ut valeat dispositio.* Reference [of a disposition in a will] should always be so made, that the disposition may have effect. 6 *Co.* 76 b.

*Semper præsumitur pro legitimatione puerorum.* The presumption always is in favor of the legitimacy of children. 5 *Co.* 98 b, *Bury's case.* *Co. Litt.* 126 a. *Best on Evid.* 335, § 297.

*Semper præsumitur pro sententia.* The presumption always is in favor of a sentence. 3 *Bulstr.* 42. *Branch's Pr.*

*Semper qui non prohibet pro se intervenire, mandare creditur.* He who does not prohibit the intervention of another in his behalf, is supposed to authorize it. 2 *Kent's Com.* 616. *Dig.* 14. 6. 16. *Id.* 46. 3. 12. 4.

*Semper sexus masculinus etiam femininum sexum continet.* The male sex always includes the female. *Dig.* 32. 62.

*Semper specialia generalibus insunt.* Specials are always included in generals. *Dig.* 50. 17. 147.

**SEMPER PARATUS.** Lat. In old pleading. Always ready; always prepared. See *Tout temps prist.*

**SEN, Sens.** L. Fr. [from Lat. *sensus*.] Sense; reason; mind; understanding. *En son droit sen*; in his right mind. *Britt.* c. 86. *En leur droit sens.* *Id.* c. 28.

**SENATOR.** Lat. In the Roman law. A member of the *senatus*, (senate.) *Dig.* 1. 9. *Calv. Lex.*

In Saxon law. An alderman. 1 *Rep. in Ch.* Appx. 8.

In old English law. A member of the king's council, or council board; a king's councillor. *Senatores sunt partes corporis regis*; councillors are parts of the king's body. *Staundf.* 72 E. 4 *Inst.* 53, in marg. They are incorporated to the king himself, and bear part of his cares. *Id.* 53.

**SENATUS.** Lat. In the Roman law. The senate; the great national council of the Roman people.

The place where the senate met. *Calv. Lex. Aul. Gell. Noct. Att.* xviii. 7. 5. But this was more commonly termed *curia*, (q. v.)

**SENATUS CONSULTUM.** Lat. In the Roman and civil law. A decree of the senate. *Dig.* 1. 2. 2. 9, 12. Defined in the Institutes to be "that which the senate orders and ordains," (*quod senatus jubet atque constituit.*) *Inst.* 1. 2. 5. See a form in *Dig.* 5. 3. 20. 6. *Tayl. Civ. Law*, 564, 566. The *senatus consulta* were among the most important sources of Roman jurisprudence. 1 *Kent's Com.* 527, 532. 1 *Mackeld. Civ. Law*, 19, 28, §§ 28, 38.

**SENATUS-CONSULTUM MARCIANUM.** Lat. In the civil law. The Marcian decree of the senate. A decree enacted in the consulate of Quintus Marcius and Spurius Postumus, in relation to the celebration of the Bacchanalian mysteries. This decree has been preserved entire to the present day, and is given in full by Dr. Taylor, with a commentary abounding in curious learning. *Tayl. Civ. Law*, 546—584. It was obtained from a copper plate dug up about the year 1640, in the territories of J. Bapt. Cigala, in the kingdom of Naples, and now in the imperial library at Vienna. *Id.* 547.

**SENATUS CONSULTUM ORFICIANUM.** Lat. In the civil law. The Orfician decree of the Senate. A decree enacted in the consulate of Orficius and Rufus, in the reign of the Emperor Marcus Antoninus, by which children, both sons and daughters, were admitted to the in-

heritance of their intestate mothers. *Inst.* 3. 4. pr.

**SENATUS CONSULTUM PEGASIANUM.** Lat. In the civil law. The Pegasian decree of the Senate. A decree enacted in the consulship of Pegasus and Pius, in the reign of Vespasian, by which an heir, who was requested to restore an inheritance, was allowed to retain one-fourth of it for himself. *Inst.* 2. 23. 5. This was declared by Justinian to be superseded by the *Senatus consultum Trebellianum*, (q. v.) *Id.* 2. 23. 7. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 23, § 668.

**SENATUS CONSULTUM TREBELLIANUM.** Lat. In the civil law. The Trebellian decree of the Senate. A decree enacted in the consulate of Trebellius Maximus and Annæus Seneca, in the reign of Nero, by which it was provided that if an inheritance was restored under a trust, all actions which, by the civil law, might be brought by or against the heir, should be given to and against him to whom the inheritance was restored. *Inst.* 2. 23. 4. *Dig.* 36. 1. See the words of the decree, *Id.* § 2.

**SENATUS CONSULTUM ULTIMÆ NECESSITATIS.** Lat. A decree of the senate of the last necessity. The name given to the decree which usually preceded the nomination of a dictator. 1 *Bl. Com.* 136.

**SENATUS CONSULTUM VELLEIANUM.** Lat. In the civil law. The Velleian decree of the Senate. A decree enacted in the consulship of Velleius, by which married women were prohibited from making contracts. *Dig.* 16. 1. *Story's Conf. of Laws*, § 425.

**SENDA.** Span. [from Lat. *semita*?] In Spanish law. A path; the right of a path. *Las Partidas*, part. 3, tit. 31, l. 3. The right of foot or horse-path. *White's New Recop.* b. 2, tit. 6, § 1.

**SENESCALCIA.** L. Lat. In old English law. The office of a seneschal, (*senescallus*.) *Fleta*, lib. 2, c. 72, § 1.

**SENESCALLUS.** L. Lat. In old English law. A seneschal; a steward; the steward of a manor. *Fleta*, lib. 2, c. 72. The steward of the king's household. *Id.* cc. 2, 3.

**SENESCHAL.** L. Fr. [L. Lat. *senescallus*, *seneschallus*, from *sein*, a house or place, and *schalc*, an officer or governor.] In old European law. A French title of office and dignity, derived from the middle

ages, answering to that of steward or high steward in England. Seneschals were originally the lieutenants of the dukes and other great feudatories of the kingdom; sometimes termed *baillis* or *bailiffs*. *Brande.*

In old English law. A steward. *Bailera à le seneschal*; shall deliver to the steward. *Litt.* sect. 78. *Co. Litt.* 61 a. *Cowell.*

**SENEUCIA.** L. Lat. In old records. Widowhood. *Cowell.*

**SENIOR.** L. Lat. Lord; a lord. *Grotius, de Jur. Bell.* lib. 2, c. 3, § 19, n. 2.

**SENIORES.** Lat. In old English law. Seniors; ancients; elders. A term applied to the great men of the realm, (*regni magnates*.) *Spelman. Feud. Lib.* 2, tit. 52.

**SENORIO.** Span. In Spanish law. Dominion or property. *Las Partidas*, part. 3, tit. 28, l. 6.

**SENSUS.** Lat. Sense; meaning; reason; understanding. *Sensus verborum est anima legis.* The sense of the words is the soul of the law. 5 *Co.* 2 b, *Elmer's case.*

*Sensus verborum ex causa dicendi accipiendus est; et sermones semper accipiendi sunt secundum subjectam materiam.* The sense of words is to be taken from the occasion of speaking them, and discourses are always to be interpreted according to the subject matter. 4 *Co.* 13 b. Applied to cases of slander by words. *Id. ibid.* See 2 *Kent's Com.* 555.

**SENTENCE.** [Lat. *sententia*, q. v.] In the civil law. The judgment of a court pronounced after the hearing of a cause. *Hallifax, Anal.* b. 3, c. 9, num. 41. *Id.* c. 11, num. 25. Used in admiralty practice, in the same sense. 1 *Kent's Com.* 402.

In the common law, sentence is exclusively used to denote the judgment in *criminal cases*. 4 *Bl. Com.* 376.

**SENTENTIA.** Lat. In the civil law. Sense; import; meaning, as distinguished from mere words. *Dig.* 50. 17. 67, 96. *Calv. Lex.*

The deliberate expression of one's will. See *Tayl. Civ. Law*, 532. See *Testamentum*.

The sentence of a judge or court. *Inst.* 4. 11. 4. Judicial opinion. *Sententia facit jus, et legis interpretatio legis vim obtinet.* Judicial opinion makes law, and the interpretation of law obtains the force of law. *Ellesm. Postn.* 55. *Branch's Pr. Sen-*

**tentia a non iudice lata nemini debet nocere.** A sentence passed by one who is not a judge [has not jurisdiction] ought to harm no one. *Fleta*, lib. 6, c. 6, § 7.

**Sententia interlocutoria revocari potest.** An interlocutory sentence, or order of a judge, may be revoked, (but a judgment cannot. *Bacon's Max.* 81, in reg. 20.

**Sententia non fertur de rebus non liquidis.** Sentence is not given upon matters that are not clear. *Jenk. Cent.* 7, case 9.

**SENTENTIALITER.** L. Lat. In old English law. By sentence. *Sententialiter terminatum.* *Artic. Cleri.* c. 6.

**SENTEZ.** L. Fr. Holy (things.) The Gospels. (Lat. *sancta.*) *Jurra sur sentez*; let him swear upon the gospels. *LL. Gul. Cong.* l. 11.

**SEP.** L. Fr. Stock; a stock. *Britt.* c. 31. *Seps*; *ceps*; the stocks. *Kelham.*

**SEPARALE.** L. Lat. In old English law. Several; a several or separate share or portion. *Ita quod nullus sciat suum separale*; so that no one knows his several. *Bract.* fol. 226.

A separate property. *In suo separali*; in his several. *Fleta*, lib. 2, c. 49, § 1.

**SEPARATE ESTATE.** Property given or settled to the separate use of a married woman. See 2 *Roper on Husb. & Wife*, 151, *et seq.* 2 *Ken's Com.* 162.

**SEPARATE MAINTENANCE.** The maintenance of a woman by her husband, on an agreement to live separately.\* An allowance made by a husband to his wife for her separate support and maintenance. *Bouvier.* See 2 *Roper on Husb. & Wife*, 267, *et seq.* 2 *Steph. Com.* 309. .

**SEPARATIM.** Lat. In old conveyancing. Severally. A word which made a several covenant. 5 *Co.* 23 a, *Mathewson's case.*

**SEPES.** Lat. In old English law. A hedge or enclosure. *Fleta*, lib. 2, c. 41, § 2. *Id.* lib. 4, c. 27, § 17.

The enclosure of a trench or canal. *Dig.* 43. 21. 4.

**SEPTIMANA.** Lat. In old English law. A week; a seven-night, or sennight. *Fleta*, lib. 1, c. 24, § 5. *Id.* lib. 2, c. 35. *Id.* lib. 5, c. 40, § 2.

**SEPTUM.** Lat. [from *sepere*, to enclose.] In the Roman law. An enclosure; an enclosed place where the people voted; otherwise called *ovile*. *Adam's Rom. Ant.* 99.

In old English law. An enclosure or close. *Cowell.*

**SEPTUNX.** Lat. In the Roman law. A division of the *as*, containing seven *uncie*, or duodecimal parts; the proportion of seven-twelfths. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note. See *As*.

**SEQUATUR SUB SUO PERICULO.** L. Lat. (Let him follow at his peril.) In old English practice. A writ which issued where a sheriff had returned *nihil*, upon a *summoneas ad warrantizandum*, and after an *alias* and *pluries* had been issued. So called, because the tenant lost his lands without any recovery in value, unless upon that writ he brought the vouchee into court. *Roscoe's Real Act.* 268. *Cowell.*

**SEQUELA.** L. Lat. [from *sequi*, to follow or sue.] In old English law. Suit; process or prosecution. *Sequela causæ*; the process of a cause; the process and depending issue of a cause or trial. *Cowell.* *Sequela curiæ*; suit of court. 2 *Mon. Angl.* 253.

Suit; following or followers; retinue. *Et totam sequelam eorundem*; and all the suit of the same. *Mag. Cart. Johan.* c. 50.

The suit of a villein; his issue or offspring; the retinue and appurtenances to the goods and chattels of servile tenants. *Cum sequela, et catallis suis quæ corpus sequuntur*; with his suit and all his chattels which follow his body. *Bract.* fol. 197 b. *Fleta*, lib. 3, c. 13, § 3. *Ovesque ses chateaux, et tout sa suyte.* *Britt.* c. 38. See *Barringt. Obs. Stat.* 306.

**SEQUESTER.** Lat. [from *sequi*, to follow.] In the civil law. A person with whom two or more contending parties deposited the subject matter of the controversy, (*apud quem plures eandem rem de qua controversia est deposuerunt.*) *Dig.* 50.16. 110. So called, say the Digests, from the circumstance that it is entrusted to one who meets, or, as it were, *follows* the contending parties, (*ab eo quod occurrenti aut quasi sequenti eos qui contendunt, committitur.*) *Id. ibid.* Or, according to Gellius, because both parties *followed* or relied upon the good faith of the person so chosen, (*quod ejus, qui electus sit, utraque pars fidem sequatur.*) *Noct. Att.* xx. 11.

A mediator or umpire between two parties, (*interventor*;) a middle-man, (Gr. *μεσέγγυος.*) *Calv. Lex.*

**TO SEQUESTER (or SEQUESTRATE.)** [Lat. *sequestrare.*] In the civil law. To deposit a thing which is the subject of a controversy, in the hands of a third person, to hold for the contending parties. See

*Sequester.* To take a thing which is the subject of a controversy, out of the possession of the contending parties, and deposit it in the hands of a third person. *Calv. Lex.*

In equity practice. To take possession of the property of a defendant, and keep the same until he shall have cleared himself of a contempt. See *Sequestration*.

In English ecclesiastical practice. To gather the fruits of a void benefice, and keep them for the use of the next incumbent. *Stat. 28 Hen. VIII. c. 11. Cowell, voc. Sequestration.* To take possession of the ecclesiastical property of a defendant, and hold it until, out of the rents, tithes and profits, the plaintiff's debt be satisfied. See *Sequestrari facias*. To dispose of the goods and chattels of one deceased, whose estate no man would intermeddle with. *Cowell, voc. Sequestration.*

In international law. To seize the property of an individual, and appropriate it to public use; to confiscate. Particularly applied to the confiscation, by a belligerent power, of *debts* due from its subjects to the enemy. 1 *Kent's Com.* 62, *et seq.*

**SEQUESTRARE.** Lat. [from *sequester*, q. v.] In the civil law. To sequester or sequestrate. *Calv. Lex. Sequestravit, et sub sequestro arcto tenuit*; (he) sequestered, and held under close sequestration. *Mem. in Scacc. T. 19 Edw. I. Bona sunt sequestranda, et neutri litigantium tradenda*; the goods are to be sequestered and to be delivered to neither of the litigants. *Clerke's Prax. Cur. Adm.* tit. 40.

**SEQUESTRARI FACIAS.** L. Lat. (You cause to be sequestered.) In English ecclesiastical practice. A process in the nature of a *levari facias*, commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes and profits thereof, and of the other ecclesiastical goods of a defendant, he have levied the plaintiff's debt. 3 *Bl. Com.* 418.

**SEQUESTRATION.** [Lat. *sequestratio*, from *sequestrare*, q. v.] In the civil law. The depositing of a thing in controversy, by the contending parties themselves, in the hands of a third person, called *sequester*, (q. v.) to be held indifferently between them, and to be delivered to the party who should be found to be entitled to it.

The taking a thing in controversy out of the possession of the contending parties,

by order of a court, and entrusting it to a third person, to be held indifferently between them, and delivered to the successful party. *Calv. Lex. Cowell.*

In English practice. The taking possession of a defendant's property, by virtue of a judicial process, and holding it until some act be done, or claim satisfied; as until a defendant in equity clears himself of a contempt, or, in ecclesiastical practice, until, out of the rents and profits, the plaintiff's debt be levied.\* 3 *Bl. Com.* 444, 418. See *Sequestrari facias*.

The act of the ordinary in disposing of the goods and chattels of one deceased, whose estate no one will meddle with. *Cowell.* Or, in other words, the taking possession of the property of a deceased person, where there is no one to claim it.

In international law. The seizure of the property of an individual, and the appropriation of it to the use of the government. See *To sequester*.

**SEQUI.** Lat. To follow. *Sequi debet potentia justitiam, non præcedere.* Power ought to follow justice, not go before it. 2 *Inst.* 454.

In old English practice. To sue; to prefer an action; to prosecute or follow up a suit or cause. *In electione illius qui sequitur*; at the election of him who sues. *Stat. Westm. 2, c. 18.*

To sue out; to obtain or issue process from a court. *Pro hujusmodi debito aut damnis, sequi breve*; for such debt or damages, to sue out a writ. *Id. ibid.*

**SERA.** Lat. In the civil law. A lock. *Dig. 19. 1. 17, pr.*

**SEREMENT, Serment.** L. Fr. [from Lat. *sacramentum*.] In old English law. An oath. *Stat. Westm. 1, c. 38. Britt. c. 45.*

**SERF, Serfe.** L. Fr. [from Lat. *servus*.] In old English law. A slave. *Que celui que serroit pris [en bataille] demorast serfe à son parnour à toutz jours*; that he who should be taken [prisoner in battle] should remain a slave to his captor forever. *Britt. c. 31.*

A villein. *Id. ibid.*

**SERiant.** L. Fr. [L. Lat. *seriandus*.] In old Scotch law. Serjeant. *Skene-de Verb. Sign.*

**SERiantia.** L. Lat. [from L. Fr. *seriaunt*, q. v.] In old English law. Serjeanty. *Bract. fol. 35 b.* See *Serjeanty*.

**SERIATIM.** L. Lat. [from *series*, order.] In order; one after another. A term used in the reports to denote the

delivery of separate opinions by the judges, one after another, beginning with the junior puisne judge, and ending with the chief justice; which is done in some cases, instead of having the opinion of the court delivered by a single judge. "The court delivered their opinions *seriatim*." 1 *Show.* 172, 266. *Seriatim et separatim*. 2 *Id.* 491.

**SERIAUNT.** L. Fr. In old English law. Serjeant. *Britt.* fol. 25, 34 b, 37, 39 b, 40, 40 b, 50, 52, 70, 103 b, 104 b, 123 b, 204, 275 b.

**SERJAND.** Sc. In old Scotch law. Serjeant. *Skene de Verb. Signif.*

**SERJANS,** *Serjantus, Serziantus, Sargantus.* L. Lat. In old European law. A serjeant. *Spelman.* See *Serjeant*.

**SERJANT.** L. Fr. Servant. *LL.* *Gul. Cong.* l. 49.

**SERJANTERIA.** L. Lat. In old English law. Serjeanty. *Mag. Cart.* 9 Hen. III. c. 27. Written, in King John's Charter, (c. 37,) *sergenteria*. In the Articles of the charter, (c. 27,) *sergantisa*.

**SERJANTIA,** *Seriantia.* L. Lat. In old English law. Serjeanty. *Spelman.* *Bract.* fol. 35 b. *Fleta*, lib. 1, cc. 10, 11. See *Serjeanty*.

**SERJEANT,** *Serjant, Serjent.* L. Fr. and Eng. [L. Fr. *seriaunt*; L. Lat. *serjans, serjantus, serjandus, seriandus, sargantus, serziantus, serzientus*; from Lat. *serviens*, serving, one who serves.] The title of several officers in the common law, generally of the ministerial class. *Spelman*, voc. *Serjans*. See *infra*. Written by Cowell, *sergeant*, which is also the form preferred in some modern dictionaries. But that *serjeant* is the proper form, is clearly shown by the use of the Fr. *seriaunt* in Britton, and the Lat. *seriantia*, in Bracton, the modern *j* being constantly written *i*, in the old books.

**SERJEANT.** L. Fr. Servant. *Vous aves cy E. P. ove son serjeant J. le fits W.* You have here E. P. with his servant J. the son of W. *Yearb.* M. 4 Edw. III. 12.

**SERJEANT AT LAW.** [L. Fr. *serjeant at ley*; Lat. *serviens ad legem*.] The highest degree of counsel in the common law, corresponding with *doctor* in the civil law. Called, also, anciently, *serjeant of the coif*, and *serjeant countor*, (*serviens narrator*.) *Cowell.* *Spelman*, voc. *Serjans*. *Fortescue, de L. L. Angliæ*, c. 50. The title literally imports, one who attends the service of

the king and his people, in the study, profession and practice of the law. *Id. ibid.* note.

\* \* This has always been a degree of the highest dignity in the English law, being what an old writer describes as "the seminary of justice, out of which the judges are called;" and, down to the present day, none but a serjeant at law can be a judge of either of the superior courts at Westminster. 3 *Bl. Com.* 27. Until within a very late period, also, the serjeants (or *countors*, as they were termed,) had the exclusive privilege of pleading and practising in the Court of Common Pleas, or Bench, that being the court in which the common law of England was supposed to be most strictly observed. *Cowell.* 3 *Mann. Gr. & S.* 537. See *Countor*, *To count*.

Serjeants are made by the king's or queen's writ, addressed to such as are called, commanding them to take upon them that degree by a certain day. See *Dyer*, 72. The assumption of the degree was formerly marked by peculiar ceremonies. The candidates for the degree assembled at Serjeant's Inn, before the two chief justices and the justices of both benches, and after *counting*, and having their *coifs* and *scarlet hoods* put on, were attired in their *party-colored robes*, and walked in procession to Westminster, where they *counted* at the bar of the Common Pleas, had their writs read, and gave rings to the judges, with inscriptions. See *Cro. Car.* Introd. *Fortescue, de L. L. Angliæ*, c. 50. Of all these ceremonies, the last alone is retained at the present day. See *Rings giving*.

**SERJEANT AT ARMS.** [L. Lat. *serviens ad arma*.] In English law. The title of an officer whose duty is described by Cowell to be, "to attend the person of the king, to arrest traitors, or persons of quality offending, and to attend the Lord High Steward of England sitting in judgment upon any traitor, and such like." Two of these, by the royal permission, attend on the two houses of parliament, and another in the Court of Chancery. *Cowell.* In the House of Lords, the serjeant at arms attends upon the chancellor with the mace, and executes the orders of the house for the apprehension of delinquents; in the Commons, he attends upon the speaker with the mace, carries messages from the bar to the table, and executes the orders of the house with respect to delinquents to be taken into his custody for breaches of its privileges. *Holthouse.*

In the United States, serjeants at arms are officers who attend upon the sessions of Congress, and of the state legislatures, with duties similar, in many respects, to those of the same officers in England. The ministerial officers attending courts of chancery are also generally styled serjeants at arms.

**SERJEANT OF THE MACE, or SERJEANT AT MACE.** [L. Lat. *serviens ad clavam*.] In English law. An officer who attends the Lord Mayor of London, and the chief magistrates of other corporate towns. *Holthouse*. 5 *East*, 304. 2 *Mod.* 58.

**SERJEANTY.** [L. Fr. *serjaunty*; L. Lat. *seriantia*, *serjantia*, *serjanteria*, *sergenteria*, *sergantisa*.] In English law. Service; an honorary kind of feudal service due to the crown for lands held of it, and which is still retained. See *Grand serjeanty*, *Petit serjeanty*.

**SERMENT.** L. Fr. [from Lat. *sacramentum*, q. v.] In old English law. Oath; an oath. *Le loy est lie par son serment à faire ses liges droit*; the king is bound by his oath to do his lieges justice. *Yearb.* H. 8 Hen. VI. 6.

**SERMO.** Lat. Speech; language; discourse; conversation. *Sermo index animi*. Speech is the index of thought or intent. 5 *Co.* 118.

*Sermo relatus ad personam intelligi debet de conditione personæ.* Language, which is referred to a person, ought to be understood of the condition of the person. 4 *Co.* 16 a.

**SERRATED.** [Lat. *serratus*, from *sera*, a saw.] In old practice. Marked or cut in notches, resembling the teeth of a saw. Some of the Roman coins were thus serrated, indented, (or *milled*, in modern phrase,) as a security against forgery. *Tac. de Mor. Germ.* v. The serrated or indented line was used in old English deeds for a similar purpose of precaution. See *To indent*, *Indenture*.

**SERURA.** L. Lat. In old English law. A lock. *Fleta*, lib. 3, c. 5, § 12.

**SERVANT.** [Lat. *serviens*.] One who serves; one who serves another, (termed his master,) under a contract of hire; one who serves or undertakes to serve another for a stipulated consideration or wages. See 2 *Kent's Com.* 258—261.

**SERVE.** In practice. To deliver with judicial effect; to deliver so as to charge a party, in law, with such delivery; to execute. To *serve* a paper is to deliver or otherwise communicate it to the opposite

party, or his attorney, so as to charge him with the receipt of it. To *serve* process is to apply it to the party named, so as to subject him to its operation, as by showing and reading it, or showing it and delivering a copy, &c. See *Service*.

**SERVE.** In Scotch practice. To render a verdict or decision in favor of a person claiming to be an heir; to declare the fact of his heirship judicially. A jury are said to *serve* a claimant *heir*, when they find him to be heir, upon the evidence submitted to them. *Bell's Dict.*

**SERVI.** Lat. [plur. of *servus*, q. v.] In old European law. Slaves; persons over whom their master had absolute dominion. 1 *Rob. Charles V. Appendix*, Note ix.

In old English law. Bondmen; servile tenants. *Cowell*.

**SERVICE.** L. Fr. and Eng. [Lat. *servitium*.] In feudal and old English law. The duty which a tenant, by reason of his fee, owed to his lord. See *Servitium*. That which he was bound to render in recompense for the land he held. 2 *Bl. Com.* 54. *Pour service que arreare luy est. Britt.* c. 27. *Pur arrearages de ascun service issuant de ascun tenement*; for arrearages of any service issuing out of any tenement. *Id. ibid.*

**SERVICE.** In Scotch law. The inquisition or verdict of a jury, by which the character of an heir is judicially established. *Hubback's Evid. of Success.* 597. The term includes the whole proceeding before the jury. *Bell's Dict.*

**SERVICE.** In practice. Judicial delivery or communication of papers; execution of process. The delivery or communication of a pleading, notice or other paper in a suit, to the opposite party, so as to charge him with the receipt of it, and subject him to its legal effect. The communication or application of process to a party or witness, so as to subject him to its operation. As applied to writs, it properly means execution *without arrest*. See 3 *Chitt. Gen. Pr.* 259.

**SERVIDUMBRE.** Span. In Spanish law. A service or servitude; the right and use which one man has in the buildings and estate of another, to use them for the benefit of his own. *Las Partidas*, part. 3, tit. 31, l. 1. *White's New Recop.* b. 2, tit. 6.

**SERVIENS.** L. Lat. [L. Fr. *seriant*, *seriaunt*.] In old English law. A serjeant; a counter or pleader. *Spelman*.

*Fleta*, lib. 2, c. 37. *Britt.* fol. 39 b, 40, 40 b. See *Serviens ad legem*.

A bailiff. The *servientes hundredorum* (serjeants of hundreds,) are mentioned by Bracton in immediate connection with bailiffs, (*ballivi*.) *Bract.* fol. 116. A bailiff, chamberlain or receiver. *Stat. Westm.* 2, c. 11. *Seriaunt* is used by Britton to denote the bailiff, steward or attorney of a private person. *Britt.* fol. 50, 70, 123 b, 204.

A sheriff's officer, (*serviens vicecomitis*.) *Bract.* fol. 157. *Fleta*, lib. 2, c. 47, § 9. Britton enumerates hundredors, *serjeants*, and bedels, as officers under the sheriff. *Britt.* fol. 2.

Any ministerial officer. *Fleta*, lib. 2, c. 71.

A vassal, or feudal tenant. *Spelman*.

A servant. *Reg. Orig.* 189, 190.

SERVIENS AD CLAVAM. L. Lat. Serjeant at mace. 2 *Mod.* 58.

SERVIENS AD LEGEM. L. Lat. In old English practice. Serjeant at law. *Spelman*, voc. *Serjans*. See *Serjeant at law*.

SERVIENS DOMINI REGIS. L. Lat. In old English law. King's serjeant; a public officer, who acted sometimes as the sheriff's deputy, and had also judicial powers. *Bract.* fol. 145 b, 150 b, 330, 358. *Spelman* supposes that he acted as public prosecutor in behalf of the crown.

SERVIENT. [from Lat. *serviens*.] Serving; subject to a service or servitude. A *servient* estate is one which is burdened with a servitude. 1 *Mackeld. Civ. Law*, 392, § 306.

SERVITIUM. Lat. [from *servire*, to serve.] In feudal and old English law. The duty of obedience and performance which a tenant was bound to render to his lord, by reason of his fee. *Spelman*. See *Co. Litt.* 65 a. *Servitium semper sequitur homagium*; service always follows homage. *Fleta*, lib. 3, c. 11, § 1.

*Servitium forinsecum*; forinsic, foreign, or extra service; a kind of service that was due to the king, over and above (*foris*) the service due to the lord. *Ideo forinsecum dici potest quia fit et capitur foris, sive extra servitium quod fit domino capitali*. *Bract.* fol. 36.

*Servitium intrinsecum*; intrinsic or ordinary service; the ordinary service due the chief lord, from tenants within the fee. *Bract.* fol. 36, 36 b.

*Servitium liberum*; free service. *Id.* fol. 24 b. *Fleta*, lib. 3, c. 13, § 1. See *Free services*.

SERVITIUM MILITARE. L. Lat.

[L. Fr. *service de chivaler*.] In old English law. Knight-service; the service of a *miles* or military tenant; military service.\* 2 *Bl. Com.* 62. *Mag. Cart.* 9 *Hen.* III. c. 27. *Id. Johan.* c. 37. Called, also, *servitium hauberticum, brigandinum* or *loricatum*, from the armor in which the tenant performed it. *Co. Litt.* 108 a.

SERVITIUM REGALE. L. Lat. In old English law. Royal service; a royal prerogative or privilege, granted to the lord of a manor, to be exercised within it. *Paroch. Ant.* 60. *Cowell*.

SERVITORS OF BILLS. In old English practice. Servants, or messengers of the marshal of the King's Bench, sent out with bills or writs to summon persons to that court. Now more commonly called *tipstaves*. *Cowell*.

SERVITUDE. [Lat. *servitus*, q. v.] A charge upon one estate for the benefit of another. 3 *Kent's Com.* 434. A species of incorporeal right derived from the civil law, resembling and answering to the *easement* of the common law. *Id. ibid.* For the various descriptions of this right, see *Servitus*.

*Service* is used by Dr. Cooper, in his translation of the Institutes, as the translation of *servitus*; and in this, he observes, he follows Wood, Taylor and Harris. *Cooper's Justin.* 88, and note. *Servitude*, however, seems to have the support of higher authority, being the form adopted by Lord Mansfield and Chancellor Kent, as well as the modern German civilians, and in the Civil Code of Louisiana. 1 *Burr.* 443. 3 *Kent's Com. ub. sup.* 1 *Mackeld. Civ. Law*, 319, § 294. *Civ. Code of Louis.* Art. 642.

SERVITUS. Lat. [from *servire*, to serve.] In the civil law. Slavery; bondage; the state of service. Defined in the Institutes of Justinian, (after Florentinus in the Digests,) to be "an institution of the conventional law of nations, by which one person is subjected to the dominion of another, contrary to natural right," (*est constitutio juris gentium, qua quis dominio alieno contra naturam subicitur*.) *Inst.* 3. 2. *Dig.* 8. 5. 4. 1. This passage is quoted verbatim by Bracton, and from Bracton by Lord Coke. *Bract.* fol. 4 b. See *Fleta*, lib. 1, c. 3. *Co. Litt.* 116. In Branch's Principia, the word *dominio* is mis-printed *domino*, which has occasioned error in the translation.

SERVITUS. Lat. In the civil law.

A service or servitude; a burden imposed upon persons or estates for the benefit of others. *Dig.* 8. 1. See 1 *Mackeld. Civ. Law*, 319—355.

*Servitus prædiorum*; a prædial servitude. (q. v.) a service, burden, or charge upon one estate, (*prædium*) for the benefit of another. *Inst.* 2. 3. 3.

*Servitus prædii rustici*; the servitude of a rural or country estate; a rural servitude. *Inst.* 2. 3. pr. & 3. *Dig.* 8. 3. 1 *Mack. Civ. Law*, 338, § 309.

*Servitus prædii urbani*; the servitude of an urban or city estate; an urban servitude. *Inst.* 2. 3. 1. *Dig.* 8. 2. 1 *Mack. Civ. Law*, ub. sup.

*Servitus actūs*; the servitude or right of walking, riding, or driving over another's ground. *Inst.* 2. 3, pr. 1 *Mack. Civ. Law*, 343, § 313. A species of right of way. See *Actus*.

*Servitus altius non tollendi*; the servitude of not building higher. A right attached to a house, by which its proprietor can prevent his neighbor from building his own house higher, (*ne altius tollat ædes suas.*) *Inst.* 2. 3. 4. *Dig.* 8. 2. 2. 1 *Mack. Civ. Law*, 340, § 311. See 2 *Wilson & Shaw's R.* 293.

*Servitus aquæ ducendæ*; the servitude of leading water; the right of leading water to one's own premises, through another's land. *Inst.* 2. 3, pr. Called, also, *aquæ ductus*. *Id. ibid.*

*Servitus aquæ educendæ*; the servitude of leading off water; the right of leading off the water from one's own on to another's ground. *Dig.* 8. 3. 29. 1 *Mack. Civ. Law*, 345, § 315.

*Servitus aquæ hauriendæ*; the servitude or right of drawing water from another's spring or well. *Inst.* 2. 3. 2.

*Servitus cloacæ mittendæ*; the servitude or right of having a sewer through the house or ground of one's neighbor. *Dig.* 8. 1. 7.

*Servitus fumi immittendi*; the servitude or right of leading off smoke or vapor through the chimney or over the ground of one's neighbor. *Dig.* 8. 5. 8. 5—7.

*Servitus itineris*; the servitude or privilege of walking, riding, and being carried over another's ground. *Inst.* 2. 3, pr. 1 *Mack. Civ. Law*, 343, § 313. A species of right of way.

*Servitus luminum*; the servitude of lights; the right of making or having

windows or other openings in a wall belonging to another, or in a common wall, in order to obtain light for one's building. *Dig.* 8. 2. 4. 1 *Mack. Civ. Law*, 346, § 311, and Kaufmann's note, *ibid.*

*Servitus ne luminibus officiatur*; a servitude not to hinder lights; the right of having one's lights or windows unobstructed or darkened by a neighbor's building, &c. *Inst.* 2. 3. 4. See *Ancient lights*.

*Servitus ne prospectus offendatur*. A servitude not to intercept one's prospect. *Dig.* 8. 2. 15.

*Servitus oneris ferendi*; the servitude of bearing weight; the right to let one's building rest upon the building, wall or pillars of one's neighbor. 1 *Mack. Civ. Law*, 339, § 310.

*Servitus pascendi*; the servitude of pasturing; the right of pasturing one's cattle on another's ground; otherwise called *jus pascendi*. *Inst.* 2. 3. 2.

*Servitus projiciendi*; the servitude of projecting; the right of building a projection from one's house in the open space belonging to one's neighbor. *Dig.* 8. 2. 2. 1 *Mack. Civ. Law*, 340, § 311.

*Servitus stillicidii*; the servitude or right of drip; the right of having the water drip from the eaves of one's house upon the house or ground of one's neighbor. *Inst.* 2. 3. 1, 4. *Dig.* 8. 2. 2.

*Servitus tigni immittendi*; the servitude of letting in a beam; the right of inserting beams in a neighbor's wall. *Inst.* 2. 3. 1. 4. *Dig.* 8. 2. 2.

*Servitus viæ*; the servitude or right of way; the right of walking, riding and driving over another's land. *Inst.* 2. 3, pr.

SERVUS. Lat. [L. Fr. *serf.*] In the civil and old English law. A slave; a bond-man. *Inst.* 1. 3, pr. *Bract.* fol. 4 b. *Omnis homo aut est liber, aut est servus*; every man is either free or a slave. *Id. ibid.* Derived, in the Digests and Institutes, from *servare*, (to preserve,) from the ancient practice of selling prisoners of war, and so preserving their lives, instead of putting them to death. *Inst.* 1. 3. 3. *Dig.* 50. 16. 239. 1. See *Fleta*, lib. 1, c. 3, § 1. *Quod attinet ad jus civile, servi pro nullis habentur, non tamen et jure naturali, quia, quod ad jus naturale attinet, omnes homines æquales sunt*; as far as regards the civil law, slaves are held as no persons; not so, however, by the law of nature, for as regards the law of nature, all men are equal. *Dig.* 50. 17. 32.

A servant. *Servus facit ut herus det*; the servant does [the work] in consideration of his master's giving [him wages.] 2 *Bl. Com.* 445. *Herus dat ut servus faciat*; the master gives [the wages] in consideration of the servant's performing [the work.] *Id. ibid.*

SERVY. L. Fr. Served. *Returne servy*; returned served. *Dyer*, 135 b, (Fr. edition.)

SESS. In English law. A tax, rate or assessment. *Callis on Sewers*, [122,] 148. Called *assess* and *sessment*. *Id. ibid.* *Id.* [125,] 151.

SESSIO. Lat. [from *sedere*, to sit.] In old English law. A sitting; a session. *Sessio parliamenti*; the sitting of parliament. *Cowell*.

SESSION. [from Lat. *sessio*, q. v.] The sitting of a court; the sitting of justices or judges in court; the time during which a court is held. Frequently used in the plural, *sessions*, like the word *sittings*, (q. v.)

SESSION, COURT OF. The supreme civil court of Scotland, instituted A. D. 1532, consisting of thirteen (formerly fifteen) judges, viz. the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. *Wharton's Lex.* *Brande*.

SESSIONS. [L. Lat. *sessiones*.] A sitting of justices in court, upon their commission, or by virtue of their appointment, and most commonly for the trial of criminal cases. The title of several courts in England and the United States, chiefly those of criminal jurisdiction.

SESSIONS OF THE PEACE. In English law. A sitting of justices of the peace for the execution of those duties which are confided to them by their commission, and by charter or statute. They are of the four following descriptions:

A *petty* or *petit session* is a sitting of two or more justices, or in some cases even a single magistrate, for the purpose of trying in a summary way, and without jury, certain minor offences particularized by statute, and for other purposes. 3 *Steph. Com.* 44.

A *special session* is a sitting of two or more justices for the transaction of some special description of business, such as licensing ale-houses, or appointing overseers of the poor, or surveyors of highways. *Id. ibid.* *Stat.* 7 and 8 *Vict.* c. 33.

A *general sessions* of the peace is a court of record holden before two or more

justices, whereof one is of the *quorum*, for execution of the general authority given to justices by the commission of the peace and certain acts of parliament. *Wharton's Lex.* 4 *Steph. Com.* 335, notes (k), (l).

The *general quarter sessions* of the peace is a court of record held in every county once in every quarter of a year, before two or more justices of the peace, one of whom must be of the *quorum*. Its jurisdiction by statute 34 *Edw. III.* c. 1, extends to the trying and determining all felonies and trespasses whatsoever, but it has never been usual to try there any greater offences than small felonies. 4 *Steph. Com.* 335, 336.

SET. A form of *sed*, used in old pleadings. *Towns. Pl.* 19. *Spelman*.

SET. L. Fr. Seven, (*sept.*) *Kelham*. Knows; known. *Id.* A corruption of *scet* or *scait*.

That; this. *Id.* A corruption of *cet*.

To SET. A word used in old conveying, synonymous with *let* or *demise*. 2 *Term R.* 425. 15 *Johns. R.* 280. It seems to be a translation of the old Latin *ponere*. *Ad firmam ponere*; to put or set to farm. *Chart. R. Hen. I. De libert. Angliæ.* *Spelman*, voc. *Firma*.

To lay or impose. "If a fine be *set* in court." 6 *Mod.* 273.

SETTER. In Scotch law. The granter of a tack or lease. 1 *Forbes' Inst.* part 2, p. 153.

SET-OFF. [Lat. *compensatio*.] In practice. A counter-claim or demand; a cross demand; a demand set up against another demand, for the purpose of reducing its amount, or of extinguishing it altogether.

A mode of defence to a civil action, being a species of plea in bar, by which a defendant alleges a reciprocal debt due to him from the plaintiff, and claims to have it allowed by way of discharge from the action, either wholly or in part, as the case may be.\* 3 *Steph. Com.* 577. 1 *Chitt. Pl.* 568. *United States Digest*, Set-off.

SET OF EXCHANGE. In mercantile law. A bill of exchange drawn in several parts, (called the "first of exchange," "second of exchange," &c.) any one part of which being paid, the others are to be void.\* *Story on Bills*, §§ 66, 67.

SETTLE. To make a final disposition of a claim between parties, by payment or otherwise; to adjust a difference between parties; to pay a debt, claim or balance.

See 11 *Alabama R.* 419. But "settle" and "pay" have been held to be not equivalent terms. Authority to an agent "to settle" does not authorize him to submit to arbitration the matters in dispute. 21 *Alabama R.* 488.

**SETTLEMENT.** [Lat. *sedes*.] A settled place of abode; residence. See *Burrow's Settlement Cases*, passim.

A right growing out of residence; a right to be considered a resident of a particular place, chiefly for the purpose of parochial relief.\* 1 *Bl. Com.* 361—363. 1 *Steph. Com.* 200—203. *Id.* 207—210. The law of settlement and the law of relief are the two main branches of which the poor-law of England consists. *Id.* 201. The place where an apprentice lies, or is lodged at night, is the place of his legal settlement. *Burr. Sett. Cas.* 570.

**SETTLEMENT.** In conveyancing. A disposition of property by deed, usually through the medium of a trustee, and for the benefit of a wife, children or other relations. See *Marriage settlement*.

**SEURE, Seuyr.** L. Fr. To sue; to prosecute. *Kelham*.

**TO SEVER.** In practice. To separate or divide. Defendants are said to *sever* in their pleas, where each pleads separately, instead of all joining in the same plea.\* *Steph. Pl.* 257.

**SEVERAL.** L. Fr. and Eng. [L. Lat. *separale*.] In old English law. A separate share or portion. *Et chescun sache son several*; and each one knows his several. *Britt. c.* 55. *Sicome son several*; as his several. *Id. c.* 59, fol. 60 b, 145, 151 b.

**SEVERAL.** [L. Lat. *separalis*.] Separate; distinct; independent; the opposite of *joint*. See *Several covenant*.

Separate; exclusive; the opposite of common. See *Several fishery*.

**SEVERAL COVENANT.** A covenant by two or more, separately; a covenant made so as to bind the parties to it severally, or individually.

**SEVERAL FISHERY.** [L. Lat. *separalis piscaria*.] A right to fish in a private water, either exclusively, or in conjunction with the owner of the soil. 1 *Crabb's Real Prop.* 114, § 108. See 3 *Kent's Com.* 410, and note. 1 *Chitt. Gen. Pr.* 224. 8 *Ad. & Ell. N. S.* 1000.

**SEVERAL.** Consisting of a number; more than one.

*Several counts* are frequently allowed to

be used by a plaintiff in the same declaration. *Steph. Pl.* 267.

*Several pleas* are also allowed to a defendant. *Steph. Pl.* 269—275.

**SEVERALTY.** A state of separation. An estate in *severalty* is one that is held by a person in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein. 2 *Bl. Com.* 179.

**SEVERANCE.** In pleading. Separation; division. The separation by defendants in their pleas; the adoption, by several defendants, of separate pleas, instead of joining in the same plea. *Steph. Pl.* 257.

**SEWER.** [L. Lat. *sewera, severa*.] A fresh-water trench compassed in on both sides with a bank. *Callis on Sewers*, [80,] 99. *Callis* calls it "a small current or little river;" "a diminutive of a river," "a common public stream." *Id.* 100.—A passage to carry water into the sea or a river. *Cowell*.—A ditch or trench carried through marshy places, to carry off the water. *Spelman*.

**SEXTANS.** Lat. In the Roman law. A subdivision of the *as*, containing two *unciae*; the proportion of two-twelfths, or one-sixth. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note.

**SEXTARY.** [Lat. *sextarius*.] In old records. An ancient measure of liquids, and of dry commodities; a quarter or seam. *Spelman*.

A quart. *Id.* But according to *Cowell*, it was about a pint and a half. And in *Fleta*, it is said the *sexterium* should contain four gallons. *Fleta*, lib. 2, c. 12, § 11.

**SEXTUS DECRETALIUM.** Lat. The sixth of the decretals. One of the subdivisions of the *Corpus Juris Canonici*, or canon law; consisting of a collection of supplements to the *Decretales Gregorii IX.* which consisted of five books. It was published A. D. 1298, and is sometimes called in English, the *Sext* and Sixth Decretal. See 1 *Bl. Com.* 82. 1 *Mackeld. Civ. Law*, 83, Kaufmann's note. *Butler's Hor. Jur.* 115, 116.

**SEYSINA.** L. Lat. In old English law. Seisin; possession of lands; or of a freehold estate in lands. *Bract.* fol. 38 b, 39, *et passim*. This is the form invariably used by Bracton.

**SEYSIRE.** L. Lat. In old English law. To take; to take possession; to seise. *Seysire in manum suum*; to seise or take into his hand. *Bract.* fol. 71 b.

*Seysitus*; seised; possessed of. *Id. et passim*.

**SHACK.** In English law. The straying and escaping of cattle out of the lands of their owners into other unenclosed land; an intercommoning of cattle. 2 *H. Bl.* 416. See *Common of shack*.

"SHALL BE." See *Erit*.

**SHAM PLEA.** A false plea; a plea of false or fictitious matter, subtly drawn so as to entrap an opponent, or create delay. 3 *Chitt. Gen. Pr.* 729, 730.

**SHAMELLÆ, Scamellæ.** L. Lat. In old records. Shambles; stalls to sell meat. *Placit. Parl.* 18 Edw. I. *Cowell*.

"SHARE" denotes interest. "Share of an estate" will pass a fee. 5 *M. & S.* 408. The word *share* may carry a moiety of a leasehold estate. 5 *East*, 501.

**SHARE AND SHARE ALIKE.** In equal shares or proportions. See *Ambl.* 656, note (1.) 5 *East*, 505. Create a tenancy in common. 2 *Florida R.* 387. 5 *Johns. Ch.* 334.

**SHAW.** In old English law. A wood. *Co. Litt.* 4 b.

"SHAWLS," decided by the Supreme Court of the United States to be "wearing apparel," within schedule C. of the tariff act of 1846. 16 *Howard's R.* 251. In this case, the meaning of the word *shawl* underwent an elaborate discussion, and the doctrine was laid down that the popular or received import of words furnishes the general rule for the interpretation of public laws, as well as of private and social transactions. *Id. ibid.* See opinion of Daniel, *J. Id.* 256.

"SHEET," held to be "a book," within the meaning of the English copyright act. 8 *Ann. c.* 19. 11 *East*, 244.

**SHERIFF.** [from Sax. *scyre-gerefa*, shire-reeve; L. Lat. *vicecomes*; L. Fr. *viscount*.] The chief civil officer of a county, specially entrusted with the execution of the laws and the preservation of the peace. In England, he transacts all the sovereign's business in the county; the crown, by letters patent, committing the custody of the county to the sheriff alone. 1 *Bl. Com.* 339. He has judicial as well as ministerial powers, being authorized to hold courts for the trial of small causes. As keeper of the Queen's peace, both by common law and special commission, he is the first man in the county, and superior in rank to any nobleman therein, during his office. In his ministerial capacity, he is bound to execute

all process issuing out of the superior courts, and in this respect is considered as an officer of these courts. And as the Queen's bailiff, it is his business to preserve her rights within his bailiwick. See *Id.* 343—344. *Hale's Anal.* sect. xii. *Sewell's Law of Sheriff*, 7—12.

In the United States, the powers and duties of the sheriff, in addition to those of conservator of the peace, are chiefly ministerial, he being the officer to whom the process of the superior courts in the several states is always directed for execution. In the commencement of civil causes, he serves the writ, and in cases requiring it, arrests and takes bail; when the cause comes to trial, he summons and returns the jury; and when it is determined he sees the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, he returns the jury, he has the custody of the delinquent, and he executes the sentence of the court, though it extend to death itself. See 1 *Bl. Com.* 344. His judicial powers are much more limited than in England, being chiefly confined to the taking of inquisitions on writs of inquiry of damages, before a jury summoned for the purpose. See *Writ of inquiry*.

The derivation of the word *sheriff*, from the Sax. *scyre-gerefa*, or *scyre-refa*, sufficiently attests the high antiquity of the office. The sheriff was, in the Saxon times, the reeve or bailiff of the shire, and during the Anglo-Norman period, acted as the deputy of the count or earl, (*comes*), who had the government of the county. Hence his title, in law Latin, of *vice-comes*, (*q. v.*) and in law French, *viscount*, (*q. v.*) that is, count's or earl's deputy. The Saxon *scyre-gerefa*, or *scyre-refa*, gradually became the English *shyre-greve*, *shire-greeve*, *shire-reeve* and *schireve*, still further contracted to *shireve* and *shrieve*, and finally softened to *shyrefe*, which was the form of the word in Camden's time. *Camd. Brit.* 104. *Shiriff* is a form used in old records, which by the change of a single letter has become the modern *sheriff*. Blount treats of the word under the forms *shirif*, or *shiref*; Cowell, under *shireve*. Skene, the Scotch expositor, uses *schireff*.

**SHERIFF CLERK.** In Scotch law. The clerk of the sheriff's court. *Bell's Dict.*

**SHERIFF DEPUTE.** In Scotch law. The principal sheriff of a county, who is also a judge. *Brande.* 1 *Chitt. Bl. Com.*

339, note. He is not properly a high sheriff. *Bell's Dict.*

**SHERIFFALTY.** The time of a man's being sheriff. *Cowell.* The term of a sheriff's office.

**SHERIFFWICK.** The jurisdiction of a sheriff. *Doct. & Stud. dial.* 2, ch. 42, p. 232. Called in modern law, *bailiwick.*

The office of a sheriff. *Finch's Law*, b. 4, ch. 25.

**SHERIFF'S JURY.** In practice. A jury summoned for the taking of inquisitions before the sheriff or under sheriff, on a writ of inquiry. 1 *Burr. Pr.* 375, 377.

**SHETAR, שֵׁטָר.** Heb. (Pronounced *shtar* and *shtor*.) A contract. *Shtor chozi chelec zachar*; a contract for half of a male's share. 1 *Eden*, 317, 325. See *Star*.

**SHIFTING USE.** A use which is made to *shift* or change from one person to another, by matter *ex post facto*, (of after occurrence.) As if an estate be limited to the use of A. and his heirs, with proviso that when B. returns from Rome, the land shall be to the use of C. and his heirs; here, on the return of B. the use changes or *shifts* from A. to C. and is hence called a *shifting* use. See 1 *Steph. Com.* 503. These shifting uses are common in all settlements; and in marriage settlements, the first use is always to the owner in fee till the marriage, and then to other uses. The fee remains with the owner until the marriage, and then it *shifts* as uses arise. 4 *Kent's Com.* 297.

**SHIP,** [Sax. *scip*; Lat. *navis*; L. Fr. *nef*,] in its general sense, as used in maritime law, is synonymous with *vessel*, and is a generic term, including all vessels. 1 *Peters' Adm. Dec.* 128, note. By the English statute of 5 & 6 Will. IV. the term *ship* is declared to comprehend every description of vessel navigating on the sea.

In a stricter sense,—a vessel with three complete masts, viz. lower, top, and top-gallant masts. *Brande.*

To **SHIP.** In maritime law. To put on board a ship; to send by ship. Goods, in this sense, are said to be *shipped*, and the merchant or person putting them on board is called the *shipper*, (q. v.)

To engage to serve on board a vessel as a seaman, for a certain voyage or for a specified term; to engage to go on board a vessel as a seaman for a certain voyage or time. See *Shipping articles.*

**SHIP-BREAKING.** In Scotch law. The offence of breaking into a ship. *Arkley's R.* 461.

**SHIPPER.** The charterer or freighter of a vessel. 3 *Kent's Com.* 218. The merchant or person who *ships* goods on board a vessel. See *To ship.*

**SHIPPING ARTICLES.** In maritime law. An agreement in writing made between the master of a vessel and the seamen engaged to serve on board, specifying the voyage or term for which they are shipped, and the rate of wages, and when they are to render themselves on board. 3 *Kent's Com.* 177. *Abbott on Ship.* 606, 611—614. *Id.* 718—725, (Perkins' ed. 1850,) and notes. This contract, though made with the master, is deemed a contract also with the owner, and on the credit of the ship; and it constitutes, also, a several contract with each seaman to all intents and purposes. *Id.* 721, note, and cases cited *ibid.* And see *Id.* (ed. 1854,) 750—770, and notes.

**SHIP'S HUSBAND.** In maritime law. A person appointed by the several part-owners of a ship, and usually one of their number, to manage the concerns of the ship for the common benefit. 3 *Kent's Com.* 151. *Abbott on Ship.* 105, (131, Perkins' ed. 1850.) Generally understood to be the general agent of the owners in regard to all the affairs of the ship in the home port. *Story on Agency*, § 35.

**SHIP'S PAPERS.** In maritime and international law. Papers with which a vessel is required by law to be provided, either as evidences of title, or in compliance with custom-house regulations, or the provisions of treaties, or for the manifestation and protection of the ship and cargo in time of war.\* The documents expected to be found on board a neutral ship are the register, the passport or sea-letter, the muster roll, the charter party, the bills of lading, the invoice, the log-book, and the bill of health. 1 *Kent's Com.* 157. *Abbott on Ship.* 347, note. See *Id.* 430, Perkins' ed. 1850, note.

**SHIP-WRECK.** [Lat. *naufragium*; L. Fr. *naufraige*.] The breaking or shattering of a ship or vessel, either by driving ashore, or on rocks and shoals in the mid-seas, or by the mere force of the winds and waves in tempests.\* 2 *Arnould on Ins.* § 296. Chancellor Kent observes that there has been some difficulty as to the true definition of shipwreck. 3 *Kent's Com.* 323.

Shipwreck, it appears, may either be *total*, as where a vessel is dashed to pieces, and reduced to a mere congeries of planks or timbers, or sinks in consequence of her injuries; or *partial*, where the vessel continues to preserve her form and construction with more or less of injury. See 2 *Arnould on Ins. ub. sup.* In the French law, various degrees of shipwreck are recognized; such as *nauffrage*, *bris absolu*, *bris partial*, *echouement avec bris*, *echouement sans bris*, &c. *Id.* note. See *Naufragium*.

SHIRA, *Schira*. L. Lat. In old English law. Shire; a shire; the shire. *Fleta*, lib. 2, c. 61, § 23.

SHIRE. [L. Lat. *shira*, *scyra*; from Sax. *scyran*, to divide.] A county. So called, because every county or shire is divided and parted by certain metes and bounds from another. *Co. Litt.* 50 a. 1 *Bl. Com.* 116.

SHIRE-MOTE. In Saxon law. The county court. See *Scire gemote*.

SHIRE-REEVE, *Shireve*. In Saxon law. The reeve or bailiff of the shire. The *viscount* of the Anglo-Normans, and the *sheriff* of later times. *Co. Litt.* 168 a. See *Sheriff*.

SHOPA. L. Lat. In old records. A shop. *Cowell*.

SHORE. [Lat. *litus*, *littus*.] Land on the margin of the sea, or a lake, or river.\* That space of land which is alternately covered and left dry by the rising and falling of the tide; the space between high and low-water marks. *Hale de Jur. Mar.* pars 1, c. 6. *Angell on Tide-Waters*, 67, c. 3. See *Sea-shore*. The shore of a fresh water river is where the land and water ordinarily meet. 6 *Cowen's R.* 547. But this is more properly called the *bank*, (*ripa*.) A river in which the tide does not ebb and flow, has no *shores* in the legal sense of the term. *Walworth*, C. 4 *Hill's R.* 375. And a lake without tides cannot properly be said to have a shore. *Ang. on Tide-Waters, ub. sup.* And see 3 *Grattan's R.* 655. 13 *Howard's R.* 391. See *Litus*, *Ripa*.

SHORT NOTICE. In practice. Notice of less than the ordinary time; generally, of half that time. 2 *Tidd's Pr.* 757. 3 *Chitt. Gen. Pr.* 709. 1 *Burr. Pr.* 213.

SHORTFORD. An old custom of the city of Exeter. A mode of foreclosing the right of a tenant by the chief lord of the fee, in cases of non-payment of rent. *Cowell*.

SI, *Cy.* L. Fr. In old English law. So. *Si luy eyde Dieu et les saintz*; so help him God and the saints. *Britt.* c. 22. *Si lour eyde Dieu et ses seyntz*; so help them God and his saints. *Id. ibid.* *Si Dieu moy eyde et les seintz*; so help me God and the saints. *Id.* c. 22. *Id.* c. 52. *Id.* c. 68. See *Saints*.

If. *S'il ne osast*; if he dares not. *Litt.* sect. 419. *Si*, in this sense, is frequently repeated in the same sentence, the latter word answering to the former, thus: *Si les jurours dient que le tenement nest mie en la ville nosme en le brefe, si chet le brefe*; if the jurors say that the tenement is not in the town named in the writ, the writ shall abate. *Britt.* c. 48.

SI. Lat. If. The proper word expressive of a condition in old conveyances. *Bract.* fol. 18 b. *Fleta*, lib. 3, c. 9, § 4. *Bacon's Arg.* Case of Revocation of Uses; *Works*, iv. 250. See *Scito quod ut*, &c. *Co. Litt.* 204 a.

An emphatic word in the entry of the old assises on record. *Assisa venit recognitura si Priorissa de K. injustè*, &c. *disseisivit Martinum le Hayward*; the assise came to recognize [i. e. to try,] if the prioress of K. unjustly, &c. disseised Martin the hayward. *Yearb.* M. 1 Edw. II. 2. Constantly used by Bracton in his references to adjudged cases.

*Si aliquid ex solemnibus deficiat, cum æquitas poseit, subveniendum est.* If any one of certain required forms be wanting, when equity requires, it will be aided. 1 *Kent's Com.* 157. The want of some of a neutral vessel's papers is strong presumptive evidence against the ship's neutrality, yet the want of any one of them is not absolutely conclusive. *Id. ibid.*

*Si a jure discedas, vagus eris, et erunt omnia omnibus incerta.* If you depart from the law, you will go astray, and all things will be uncertain to every body. *Co. Litt.* 227 b.

*Si assuetis mederi possis, nova non sunt tentanda.* If you can be relieved by accustomed remedies, new ones should not be tried. 10 *Co.* 142 b. If an old wall can be repaired, a new one should not be made. *Id. ibid.*

*SI antiquitatem spectes, est vetustissima; si dignitatem, est honoratissima; si jurisdictionem, est capacissima*; if you look at its antiquity, it is the oldest; if at its dignity, it is the most honorable; if at its jurisdiction, it is the most comprehensive.

The high court of parliament is thus described by Lord Coke. 4 *Inst.* 36; quoted, 1 *Bl. Com.* 160.

**SI CONTINGAT.** Lat. If it happen. Words of condition in old conveyances. 10 *Co.* 42 a. *Mary Partington's case.*

**SI ITA EST.** Lat. If it be so. Emphatic words in the old writ of mandamus to a judge, commanding him, if the fact alleged be truly stated, (*si ita est*,) to affix his seal to a bill of exceptions, (*quod apponat sigillum*.) Marshall, C. J. 5 *Peters' R.* 192, referring to the Register for the form. The writ in the Register is not strictly a *mandamus*, *præcipimus* being the word used. It is called *breve de ponendo sigillum ad exceptionem*; a writ for putting a seal to an exception. *Reg. Orig.* 182.

**SI FECERIT TE SECURUM.** L. Lat. If [he] make you secure. In practice. The initial and emphatic words of that description of original writ which directs the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gives the sheriff security effectually to prosecute his claim. 3 *Bl. Com.* 274. See *Reg. Orig.* 30, 72, *et passim*.

**SI NON OMNES.** Lat. (If all cannot.) In English practice. A writ of association of justices whereby, *if all* in commission *cannot* meet at the day assigned, it is allowed that two or more may proceed with the business. *Cowell. F. N. B.* 111 C. *Id.* 186 A. *Reg. Orig.* 202, 206.

**SI PRIUS.** L. Lat. In old practice. If before. Formal words in the old writs for summoning juries. *Fleta*, lib. 2, c. 65, § 12. See *Nisi prius writ*.

**SI QUIS.** Lat. In the civil law. If any one. Formal words in the prætorian edicts. The word *quis*, though masculine in form, was held to include women. *Dig.* 50. 16. 1.

**SI RECOGNOSCAT.** Lat. (If he acknowledge.) In old practice. A writ which lay for a creditor against his debtor for money numbered (*pecunia numerata*), or counted, that is, a specific sum of money, which the debtor had acknowledged in the county court, to owe him, as received in *pecuniis numeratis*. *Cowell.*

**SIC.** Lat. So. *Sic interpretandum est ut verba accipiantur cum effectū.* [A statute] is to be so interpreted that the words may be taken with effect, [that its words may have effect.] 3 *Inst.* 80.

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*Sic enim debere quem meliorem agrum suum facere, ne vicini deteriore faciat.* Every one ought so to improve his land, as not to injure his neighbor's. 3 *Kent's Com.* 441. A rule of the Roman law.

*Sic utere tuo ut alienum non lædas.* So use your own [right or property] as not to injure another's. 9 *Co.* 59 a, *William Aldred's case.* 1 *Bl. Com.* 306. 3 *Id.* 217. *Broom's Max.* 160, [274.] One of the fundamental maxims of the law. Thompson, C. J. 15 *Johns. R.* 218. Woodworth, J. 17 *Id.* 99. "A principle of universal obligation." Woodward, J. 26 *Penn. St. R.* 118. But see 4 *Comstock's R.* 198. "A principle as old as civilization itself, and no less of morals than law." Ranney, J. 4 *Ohio St. R.* 415. And see 12 *Grattan's R.* 325.

**SIC HIC.** Lat. So here. Words used in argument, in the old books. *Yearb.* M. 2 Hen. VI. 1.

**SIC SUBSCRIBITUR.** Lat. In Scotch practice. So it is subscribed. Formal words at the end of depositions, immediately preceding the signature. 1 *How. St. Trials*, 1379.

**SICARIUS.** Lat. [from *sica*, a dagger or knife.] In the civil law. An assassin; one who carried a knife, dagger or other weapon, with intent to kill. *Inst.* 4. 18. 5. The *Lex Cornelia de sicariis* was enacted to punish such persons. *Id. ibid. Dig.* 48. 8.

**SICH, Sichet, Siket.** [L. Lat. *sichetum, sikettus*.] In old records. A little current of water, that is dry in summer; a water furrow or gutter. 2 *Mon. Angl.* 426. *Cowell.*

**SICKERBORGH.** Sc. [from *sicker*, sure, and *borgh*, pledge.] In old Scotch law. A sure pledge. *Skene de Verb. Sign. voc. Sacreborgh.* See *Sacaburth*.

**SICOME.** L. Fr. So; as. *Sicome son several*; as his several. *Britt.* c. 59. *Sicome moy ayde Dieu*; so help me God. *Litt.* sect. 514.

**SICUT.** Lat. As. *Sicut alias*; as before, or on another occasion. *Yearb.* M. 8 Edw. III. 45. See *Alias. Sicut pluries*; as oftentimes. See *Pluries. Sicut natura non facit saltum, ita nec lex.* As nature does nothing by a bound or leap, [in a hurried or irregular manner,] so neither does law. *Co. Litt.* 238 b.

**SICUT ME DEUS ADJUVET.** Lat. So help me God. *Fleta*, lib. 1, c. 18, § 4.

**SIDE BAR RULE.** In English practice. A rule authorized by the courts to be granted by their officers as a matter of course, without formal application being made to them in open court. So called, because anciently moved for by the attorneys at *side bar*, that is, in an informal way. These rules are also called in the Court of Common Pleas, *treasury* rules, because moved for in the treasury chamber of the court. See 1 *Tidd's Pr.* 483, 484.

**SIDELINGS.** [L. Lat. *sidlingi*, *sythlingi*.] In old records. Unploughed pieces of land on the *sides* of fields. See *Butts*. Meres or balks on the side of arable lands. 2 *Mon. Angl.* 275. *Cowell*.

**SIDESMEN or QUESTMEN.** [L. Lat. *synodales*.] In English ecclesiastical law. Persons yearly chosen, according to the custom of every parish, to assist the churchwardens in the inquiry, and presenting such offenders to the ordinary as are punishable in the court christian. *Cowell*. Blount says they are more properly called *synodsmen*.

**SIDINGS.** In old English law. Boundary lines on the *sides* of lands. *Cro. Jac.* 183. See *Buttals*.

**SIEGE.** Fr. In French law. Seat. *Dans tous les sièges de l'Amirauté*; in all the seats of the admiralty. *Ord. Mar.* liv. 1, tit. 1, art. 1.

**SIEGLE.** L. Fr. [Lat. *seculum*.] In old English law. Age. *Kelham*.

**SIEL.** L. Fr. [Lat. *sella*.] In old English law. A saddle. *Kelham*.

**SIEN.** L. Fr. Seat. *Kelham*.

**SIER.** L. Fr. [Lat. *secare*.] In old English law. To mow. *En temps de sier bles*; in harvest time. *Kelham*.

**SIERVO.** Span. [from Lat. *servus*, q. v.] In Spanish law. A slave. *Las Partidas*, part. 4, tit. 21, l. 1.

**SIET.** L. Fr. Knows. *Ne siet rien*; knows nothing. *Kelham*.

**SIETE PARTIDAS.** Span. Seven parts. See *Las Partidas*.

**SIGILLARE.** Lat. [from *sigillum*, a seal.] In the civil and old English law. To seal; to affix a seal. *Calv. Lex. Sigillatum*; sealed. 1 *Salk.* 141. *Per literas vestras sigillatas sigillo tuo, et sigillis prædictorum juratorum*; by your letters sealed with your seal, and the seals of the aforesaid jurors. *Bract.* fol. 310.

**SIGILLUM.** Lat. [dimin. of *signum*, a seal.] In old English law. A seal. *Sigillum est cera impressa*; a seal is wax im-

pressed. 3 *Inst.* 169. See *Seal. In cujus rei testimonium, huic scripto sigillum meum apposui*; In witness whereof, I have to this writing set my seal. *Bract.* fol. 38. *Fleta*, lib. 3, c. 14, § 13. *Id.* lib. 2, c. 60, § 25.

**SIGLA.** Lat. In the Roman law. Marks or signs of abbreviation used in writing. *Cod.* 1. 17. 1. 13.

To **SIGN.** To affix the name to an instrument or writing; to subscribe. Obviously derived from the Lat. *signare*, which, however, signified *to seal*, as distinguished from *subscribere*, to subscribe, or write under.

\* \* In the construction of that provision of the Statute of Frauds in relation to promises and agreements of certain kinds, which requires a "memorandum or note in writing, signed by the party to be charged, or his agent," &c. it has been held that the word "signed" did not necessarily import the writing of the party's name *underneath* the memorandum or instrument, that is, at the *bottom* or *end* of it; but that, if the name appeared in any part of the writing, and was put there by him or his authority, it was sufficient. This has become the settled construction of the word, both in England and in the United States. 3 *Meriv.* 53. 2 *Bos. & Pull.* 238. 2 *M. & S.* 286. 14 *Johns. R.* 484, 486. 13 *Mass. R.* 87. 2 *Kent's Com.* 511, and note. In the state of New-York, however, the courts found themselves so much at large as to what should be considered a *signing* under this statute, as thus construed, that, on the revision of the statutes in 1829, the word "signed" was, on the recommendation of the revisers, stricken out of the provision, and the word "subscribed" inserted in its place. 2 *Rev. Stat.* [135,] 70, § 2. See *Reviser's Notes*, 3 *Rev. St.* 655. And although the substituted word was at first construed as loosely as the word *signed* had been, its meaning has at length been judicially settled in conformity with its literal and popular signification, viz. as importing an *actual underwriting* of the name. 26 *Wendell's R.* 341. 2 *Selden's R.* 9. This was going back to what had been, in the earlier English cases, (and not without reason,) contended for, as the true meaning of the provision as it had been originally enacted.

**SIGNARE.** Lat. [from *signum*, seal, or mark.] In the civil law. To seal; to affix

a seal; to confirm by a seal, (*sigillo confirmare*.) *Si ab ipso testatore annulum accepero, et signavero, testamentum valet, quasi alieno signaverim*; if I should take a ring from the testator himself, and seal [with it,] the testament is valid, as though I had sealed with another's. *Dig.* 28. 2. 22. 2. Literally, to put one's own mark, (*signum*.) upon a thing. *Calv. Lex.*

In old English law. To seal a measure. *Fleta*, lib. 2, c. 82, § 1.

**SIGNATORIUS ANNULUS.** Lat. In the civil law. A signet-ring; a seal-ring. *Dig.* 50. 16. 74.

**SIGNATURE.** [Lat. *signatura*, from *signum*, a seal or mark.] The writing or subscribing of one's name at the end of an instrument, by which it is made the act of the party so subscribing; an essential part of every valid instrument. Literally, the impression of a stamp, sign or mark, (*signum*.) upon a thing.

The name of a party subscribed to an instrument.

A signature may be written either by the party himself, or by his authorized agent, and it may be expressed either by the party's actually writing his name, or making his *mark*, (the original meaning of *signum*, q. v. ;) and it may be written in some cases in pencil, as well as with ink, and even expressed by the party's initials. See *Mark, Initial*. As to the signature of a deed, see 4 *Kent's Com.* 450, *et seq.* As to the signature of a will, see 2 *Greenl. Evid.* § 674. 1 *Williams on Exec.* 63—71. As to the signature of bills of exchange, see *Story on Bills*, § 53. As to signatures under the Statute of Frauds, see *Blackburn on the Contract of Sale*, 69.

**SIGNET.** [L. Lat. *signetum*.] In English law. One of the queen's seals in England, used in sealing private letters and grants under the sign manual. It is in the custody of the Secretary of State for the home department. *Brande*. The signet in Scotland is the seal by which the queen's letters and writs for the purpose of justice are now authenticated. *Id.*

**SIGNIFICAVIT.** L. Lat. [He] hath signified. In English practice. That clause in the writ *de contumace capiendo*, which states that a certain judge, or other competent person, *has signified* to the king that the person against whom the writ is issued is manifestly contumacious. *Holt-house*.

The writ itself, containing this clause.

*Id.* The old writ *de excommunicato capiendo* began with the word *significavit*. *Reg. Orig.* 65.

**SIGNING** may be by printing as well as writing. 2 *M. & S.* 286. Signing may be by stamping. *Le Blanc, J. Id.* 289.

**SIGNING JUDGMENT.** In English practice. The signature or allowance of the proper officer of a court, obtained by the party entitled to judgment in an action, expressing generally that judgment is given in his favor; and which stands in the place of its actual delivery by the judges themselves. *Steph. Pl.* 110, 111. The signing of an *incipitur* of the declaration, and of the *postea*, in taxing costs, is called signing judgment. *Id. ibid.* note.

In American practice, *signing judgment* means a signing of the judgment record itself, which is done by any officer authorized to tax costs and sign judgments, on the margin of the record, opposite the entry of the judgment. 1 *Burr. Pr.* 268.

**SIGN MANUAL.** In English law. The royal signature to grants and letters, written *at the top* of the instrument. 2 *Bl. Com.* 347. 9 *Mod.* 54.

**SIGNUM.** Lat. In the Roman and civil law. A sign; a mark; a seal. The seal of an instrument. *Dig.* 28. 1. 22. 3, 5. *Calv. Lex.*

A species of proof. By *signa* were meant those species of *indicia* which come more immediately under the cognizance of the senses, such as stains of blood on the person of the accused. *Best on Presumptions*, 13, note (f.) See *Fleta*, lib. 1, c. 25, § 14.

In Saxon law. A cross prefixed to the name of a subscribing witness, as a sign of assent and approbation to a charter or other deed; commonly used among the Saxons and some of the first Normans, before the common use of either affixed or appending seals, when subscriptions were in this form: + *Signum Roberti Episcopi Linc.* + *Signum Nigelii de Oyley, &c.* *Cowell*.

In old English law. A seal. *Ideo in testimonium et rei gestæ probationem, apponat donator signum, adjiciendo clausulam istam vel consimilem*; therefore, in testimony and in proof of the thing done, the donor should set to his seal, adding this clause or the like. *Fleta*, lib. 3, c. 14, § 13.

A mark put on sheep. *Id.* lib. 2, c. 70, § 5.

**Silent leges inter arma.** The power of law is suspended during war. *Bacon's Arg. Case of the Postnati of Scotland; Works*, iv. 347.

**SILVA.** Lat. In the civil law. Wood; a wood. See *Sylva*.

**SILVA CÆDUA.** Lat. In the civil law. That kind of wood which was kept for the purpose of being cut, (*qui in hoc habetur, ut caderetur.*) *Dig.* 50. 10. 30. According to Servius, it was that kind, which, when cut down, grew up again from the trunks or roots, (*quæ succisa rursus ex stirpibus aut radicibus renascitur.*) *Id.* See *Id.* 7. 1. 9. 7. *Id.* 7. 1. 10.

In English ecclesiastical law. Underwood; coppice-wood. 2 *Inst.* 642. *Cowell*, voc. *Sylva cædua*. All small wood and under-timber, and likewise timber when cut down, under twenty years' growth; titheable wood. 3 *Salk.* 347. Trees intended to be cut, or "that be able to be cut," as distinguished from fruit-bearing trees. *Doct. & Stud.* dial. 2, ch. 55, p. 291.

**SIMILITER.** Lat. [L. Fr. *semblément*.] In pleading. Likewise; the like. The name of the short formula used either at the end of pleadings, or by itself, expressive of the acceptance of an issue of fact tendered by the opposite party; otherwise termed a *joinder in issue*. *Steph. Pl.* 57, 237. The common form of it is,—“And the said plaintiff doth the like.” *Id.* This is a literal translation of the old Latin form,—“*Et prædictus A. similiter*,” the last word of which has been retained as the name of the English formula. The elements of the *similiter* are contained in the following sentence of Bracton: *simpliciter dicat quod liber sit, et inde ponat se super juratam, et alius affirmet quod non, et inde se ponat similiter super juratam*; he may simply say that he is a freeman, and thereof may put himself upon the country, and the other party may affirm that he is not, and thereof may put himself likewise upon the country. *Bract.* fol. 192 b.

**SIMILITUDO.** Lat. In old English law. Similitude; likeness; similarity. *Similitudo legalis est, casuum diversorum inter se collatorum similis ratio; quod in uno similitum valet, valebit in altero*; legal similarity is [consists in] the like reason of different cases when compared together; that which has force in one of the like cases shall have force in the other. *Co. Litt.* 191.

**SIMNELL, Simenel, Symenel.** [L. Lat. *siminellus*, from *simila*, the finest part of flour.] In old English law. The purest white bread. *Fleta*, lib. 2, c. 9, § 1. *Spelman*, voc. *Siminellus*. *Cowell*.

**SIMONY.** [Lat. *simonia*.] In English ecclesiastical law. The corrupt presentation of any one to an ecclesiastical benefice, for money, gift, or reward. 2 *Bl. Com.* 278.—An unlawful contract for presenting a clergyman to a benefice. *Brande*. So called from the resemblance it is said to bear to the sin of *Simon Magus*, though, according to Blackstone, the purchasing of holy orders seems to approach nearer to his offence. 2 *Bl. Com. ub. sup.* See 1 *Id.* 388. *Smith on Contracts*, 174—176, and note.

**SIMPLA.** Lat. In the civil law. The single value of a thing. *Dig.* 21. 2. 37. 2. See *Dupla*.

**SIMPLE.** [Lat. *simplex*.] Pure; unqualified; unqualified; composed of the fewest elements. See *infra*.

**SIMPLE AVERAGE.** In French law. Particular average. *Ord. Mar.* liv. 3, tit. 7, art. 2, 3.

**SIMPLE CONTRACT.** A contract not under seal; an agreement by parol, including both verbal and written agreements.\* *Chitty on Contracts*, 4, 7, (Perkins' ed. 1848.)

**SIMPLE LARCENY.** In criminal law. Mere larceny or theft of goods, as distinguished from larceny from the person or dwelling. See *Larceny*.

**SIMPLE OBLIGATION.** [Fr. *obligation simple*.] In the civil law. An obligation which does not depend for its execution upon any event provided for by the parties, or which is not agreed to become void on the happening of any such event. *Civil Code of Louis.* Art. 2015.

**SIMPLE WARRANTICE.** In Scotch law. An obligation to warrant or secure from all subsequent or future deeds of the grantor. *Whishaw*. A simple warranty against the grantor's own acts.

**SIMPLEX.** Lat. Simple; single; pure; unqualified. *Simplex et pura* [*donatio*] *dici poterit, ubi nulla est adjecta conditio, nec modus*; a gift may be said to be simple and pure, where there is no condition or qualification annexed to it. *Bract.* fol. 17. *Fleta*, lib. 3, c. 8. Lord Coke observes that it is called *simplex, quia sine plicis*, because without folds. *Co. Litt.* 2 a.

**SIMPLEX COMMENDATIO.** L. Lat.

In the law of contracts. Mere commendation or praise. **SIMPLEX commendatio non obligat.** Mere commendation does not bind. 2 *Kent's Com.* 485.

**SIMPLEX DICTUM.** L. Lat. In old English practice. Simple averment; mere assertion without proof. *Si autem petens pro se nullam habeat probationem nisi simplex dictum, et simplicem vocem de dimissione et termino*; but if the demandant have no proof on his part, except the mere allegation and the mere speech of a demise and a term. *Bract.* fol. 320. The word *vox*, in this passage, illustrates briefly, but expressively, the oral pleading of the time.

**SIMPLEX JUSTITIARIUS.** L. Lat. In old records. Simple justice. A name sometimes given to a puisne justice. *Cowell.*

**SIMPLEX LOQUELA.** L. Lat. In old English practice. Simple speech; the mere declaration or *plaint* of a plaintiff. *Nullus ballivus de cetero ponat aliquem ad legem manifestam nec ad juramentum, simplici loquela sua, sine testibus fidelibus ad hoc inductis*; no bailiff shall hereafter put any man to his open law, nor to his oath, upon his own mere plaint [or bare saying, as Coke translates it,] without lawful witnesses brought in to [prove] it. *Magna Charta*, c. 28. 2 *Reeves' Hist. Eng. Law*, 259. Called, in *Fleta*, *simplex vox*. Lib. 2, c. 63, § 9.

**SIMPLEX OBLIGATIO.** Lat. A single obligation; a bond without a condition. 2 *Bl. Com.* 340.

**SIMPLEX PEREGRINATIO.** L. Lat. In old English law. Simple pilgrimage. *Fleta*, lib. 4, c. 2, § 2.

**Simplicitas est legibus amica, et nimia subtilitas in jure reprobatur.** Simplicity is a favorite of the laws, and too great subtlety in law is reprobated. 4 *Co.* 5 b.

**SIMPLICITER.** Lat. Simply; by itself; in itself; by its own force; without any addition. The word "effects," in a will, if used *simpliciter*, will carry the whole personal estate. *Ward on Legacies*, 209. *Fleta*, lib. 3, c. 8.

**SIMULATED FACT.** In the law of evidence. A fabricated fact; an appearance given to things by human device, with a view to deceive and mislead. See *Burr. Circ. Evid.* 131.

**SIMULATION.** [Lat. *simulatio*.] In the civil law. Misrepresentation or concealment of the truth; as where parties pretend to perform a transaction different

from that in which they really are engaged. 1 *Mackeld. Civ. Law*, 165, § 168.

**SIMUL CUM.** Lat. (Together with.) In practice. A *capias simul cum* is a *capias* in which the sheriff is directed to take a certain defendant, to answer *together with* other defendants in the action. 1 *Burr. Pr.* 103. Indictments and declarations in trespass are also sometimes drawn with a *simul cum* clause. 2 *Lill. Abr.* 469. And see *Fleta*, lib. 5, c. 4, § 2. *Id.* lib. 6, c. 49, § 4.

**SIMUL ET SEMEL.** Lat. Together and at one time. *Fleta*, lib. 2, c. 47, § 5. 1 *Saund.* 323 a, note (6.)

**SINE.** Lat. Without. See *infra*.

**SINE ANIMO REVERTENDI.** Lat. Without the intention of returning. 1 *Kent's Com.* 78.

**SINE ASSENSU CAPITULI.** L. Lat. (Without the consent of the chapter.) In old English practice. A writ which lay where a dean, bishop, prebendary, abbot, prior or master of a hospital, aliened the lands holden in the right of his house, abbey or priory, without the consent of the chapter; in which case his successor might have this writ. *F. N. B.* 194 l. *Cowell.*

**SINE CONSIDERATIONE CURIÆ.** L. Lat. Without the judgment of the court. *Fleta*, lib. 2, c. 47, § 13.

**SINE CURA.** L. Lat. Without cure or charge; without any duty attached. See *Cura*.

**SINE DECRETO.** Lat. Without authority of a judge. 2 *Kames' Equity*, 115.

**SINE DIE.** L. Lat. [L. Fr. *sans jour*.] Without day; without appointment of a day to appear again. *De hiis qui recedunt sine die, per defaultam querentis vel petentis*; from those who go without day, by default of the plaintiff or demandant. *Fleta*, lib. 2, c. 39, § 1. A term expressive of a final discharge or dismissal. See *Eat inde sine die, Dies, Day, Sans jour*.

**SINE HOC QUOD.** L. Lat. Without this that. A technical phrase in old pleading, of the same import with the phrases *absque hoc quod*, and L. Fr. *sans ceo que*, (qq. v.)

**SINE JUDICIO.** L. Lat. Without judgment; without a judicial sentence. *Fleta*, lib. 4, c. 14, § 1.

**SINE LIBERIS.** Lat. Without children. For the construction of this phrase in the civil law, see *Dig.* 50. 16. 148. *Id.* 50. 17. 187.

**SINE NUMERO.** L. Lat. Without stint or limit. A term applied to common. *Fleta*, lib. 4, c. 19, § 8.

**SINE PROLE.** Lat. Without issue. A term used in genealogical tables.

**SINGLE BILL.** A written engagement under seal, for the payment of money without a penalty. See *Bill single*. It seems to have formerly been nearly the same with a single bond, (q. v.) *Shep. Touch.* 367. Single bills are still in use in the United States; as in Pennsylvania, Virginia, South Carolina, Mississippi and Florida. 26 *Penn. St. R.* 142. 10 *Richardson's Law R.* 145. 6 *Florida R.* 357.

**SINGLE BOND.** [Lat. *simplex obligatio*.] A bond without a condition. 2 *Bl. Com.* 340.

**SINGULAR** used to include the plural. *Dig.* 50. 16. 158.

**SINGULAR SUCCESSOR.** In Scotch law. A purchaser, in contradistinction to the heir of a landed proprietor. *Bell's Dict.*—He who acquires any right or thing, by a particular title, for some cause. If for value given, or for valuable consideration, the acquirer is termed a *singular successor*, for an onerous cause; and if for love, or on the score of affection and liberality, he is styled a *lucrative successor*. 1 *Forbes' Inst.* part 3, p. 1.

**SINGULARITER.** Lat. In the singular. 11 *East*, 77, arg.

*Si non apparet quid actum est, in contractibus veniunt ea quæ sunt moris et consuetudinis in regione in qua actum est.* If it be not clear [if the instrument do not clearly show] what has been done, the custom and usage of the place in which the transaction took place, may be applied in explanation of the contract. *Dig.* 50. 17. 34. 2 *Kent's Com.* 555.

*Si nulla sit conjectura quæ ducat alio, verba intelligenda sunt ex proprietate, non grammatica sed populari ex usu.* If there be no conjecture which leads to a different result, [if there be no reasonable ground for a different interpretation,] words are to be understood according to their proper meaning, not in a grammatical but in the popular and ordinary sense. 2 *Kent's Com.* 555.

**SI PARET.** Lat. (If it appears.) In the Roman law. Words used in the formula by which the prætor appointed a judge, (*judex*), and instructed him how to decide the cause. *Judex esto.* **SI PARET Aulum Agerium apud Numerium Negi-**

*dium mensam argenteam deposuisse, eamque dolo malo Numerii Negidii Aulo Agerio redditam non esse, quanti ea res erit, tantam pecuniam judex Numerium Negidium Aulo Agerio condemnato; SI NON PARET absolvo.* Let — be the judge. If it appear that Aulus Agerius has deposited with Numerius Negidius a silver salver, and that it has not been re-delivered to Aulus Agerius through the fraud of Numerius Negidius, let the judge condemn Numerius Negidius to pay Aulus Agerius as much money as the thing shall have been worth: if it does not appear, acquit [him.] *Gaius Inst.* iv. § 47. *Paret* was an old form of *apparet*, (it appears.)

*Si quid universitati debetur singulis non debetur, nec quod debet universitas singuli debent.* If any thing is due to a corporation, it is not due to the individual members of it, nor do the members individually owe what the corporation owes. *Dig.* 3. 4. 7. A maxim of the civil law. 1 *Bl. Com.* 484.

*Si quis in nomine, cognomine, prænomine legatarii erraverit, si de persona constat, nihilominus valet legatum.* If one should have made a mistake in the nomen, cognomen or prænomen of a legatee, if it be clear as to the person intended, the legacy is nevertheless valid. *Inst.* 2. 20. 29.

**SIST.** In Scotch practice. A stay or suspension of proceedings; an order for a stay of proceedings. *Bell's Dict.* voc. *Advocation*.

To **SIST.** In Scotch practice. To stay proceedings. *Bell's Dict.* voc. *Advocation*.

**SISTERE.** Lat. In the civil law. To produce a party in court, (*in judicio*.) *Dig.* 2. 10. *Id.* 2. 11. 2. 3. *Clerke's Prax. Cur. Adm.* tit. 19.

To **SIT.** [Lat. *sedere, residere*.] To occupy a seat; to be permanently fixed; to be prepared for deliberate action. Applied judicially, it signifies,

To occupy the bench of a court, as judges *sit*.

To be formally constituted and held for the transaction of business, as a court *sits*.

To occupy a *fixed seat* of judgment, as distinguished from a moveable one. See *Sittings*.

**SITE.** [from Lat. *situs*, q. v.] The place where a house stands or has stood.\* The standing of any place; the situation of a capital house or messuage. *Cowell*. Sometimes written *scite*. *Stat.* 32 *Hen.* VIII. c. 20. *Stat.* 22 *Car.* II. c. 11.

**SITTINGS.** [L. Lat. *sessiones*.] In practice. The holding of a court, with full form, and before all the judges; as a *sittings in banc*. 3 *Steph. Com.* 423.

The holding of a court of *nisi prius* by one or more of the judges of a superior court, instead of the ordinary *nisi prius* judge. See *Id.* 422.

**SITUS.** Lat. Position; situation; location; site. The place where a thing is; as the *situs* of property. 5 *Peters' R.* 524, 525. "The *situs rei*." 2 *Kent's Com.* 433. See *Lex loci rei sitæ*. Locality for judicial purposes. "A debt has no *situs* or locality." *Ersk. Inst.* b. 3, tit. 9, sec. 4. 2 *Kent's Com.* 458, note.

**SIWER.** L. Fr. In old English law. To sue. *Siwist*; sued. *Yearb.* II. 1 Edw. II. 3.

**SIWITE, Siwyte.** L. Fr. In old English law. Suit. *A qi siwite*; at whose suit. *Yearb.* T. 1 Edw. II. 8. *Il en ad siwite bone*; he hath good suit thereof. *Id.* H. 2 Edw. II. 26.

**SIX CLERKS.** [L. Lat. *sex clerici*.] In English practice. Officers of the Court of Chancery, who received and filed all bills, answers, replications, and other papers, signed office copies of pleadings, examined and signed docquets of decrees, &c. and had the care of all records in their office. *Holthouse.* 3 *Bl. Com.* 443. *Fleta*, lib. 2, c. 13, § 15. They were abolished by statute 5 Vict. c. 5.

"SIX MONTHS" is sometimes construed to mean half a year, and not merely six lunar months. *Cro. Jac.* 167. 1 *Chitt. Gen. Pr.* 775. 3 *Id.* 108. 2 *Chitt. Bl. Com.* 140, note. See *Month, Half year*.

**SKELLA.** L. Lat. In old European law. A bell. *L. Salic.* tit. 29, § 3. *Spelman*.

**SKERDA.** L. Lat. In old English law. A scar. *Bract.* lib. 3, (de corona,) c. 24, num. 2.

**SLADE.** [Sax. *slæd*.] In old records. A long, flat and narrow piece or strip of ground. *Par. Antiq.* 465. *Kennett's Gloss.* *Cowell*.

**SLAINS.** See *Letters of slains*.

**SLANDER.** [from L. Fr. *esclaunder*, *eslaunder*, *slaunder*; Sc. *sklander*.] Oral defamation. *Cooke's Law of Defamation*, 1.—Defamation by words spoken.\*—The utterance of false, malicious and defamatory words, tending to the damage and derogation of another.\* 3 *Bl. Com.* 123. 3 *Steph. Com.* 472. As where a man utters

any thing of another, which may either endanger him in law, by impeaching him of some punishable crime,—as to say that he has poisoned another, or is perjured; or which may exclude him from society,—as to charge him with having an infectious disorder, tending so to exclude him; or which may impair or hurt his trade or livelihood,—as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave; or which may disparage him in an office of public trust,—as to say of a magistrate that he is partial and corrupt. 3 *Steph. Com.* 473. 3 *Bl. Com.* 123. See *Cooke on Defamation*, 7—24.

Defamation generally, whether oral or written. In this sense, the word is used in several of the older books, of established authority. *Bacon's Abr. Slander. Com. Dig. Action upon the case for Defamation, A. Bull. N. P.* 3. 1 *Starkie on Slander*, (Wendell's ed. 1843,) note.

**SLAVE.** [L. Fr. *serf*; Lat. *servus*; Fr. *esclave*.] A bond-man; one who is bound to serve for life.\* One who is by law deprived of his liberty for life, and becomes the property of another. *Bouvier*.—A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another. *Webster*.—One who is under the power of a master, and who belongs to him; so that the master may sell and dispose of his person, of his industry, and of his labor, without his being able to do any thing, have any thing, or acquire any thing, but what must belong to his master. *Civil Code of Louis.* 35. See *Servus*.

**SLAVERY.** [Lat. *servitus*.] The state or condition of a slave; a state of bondage for life. See 2 *Kent's Com.* 247—257.

**SLIPPA.** L. Lat. In old records. A stirrup, (*stapes*.) *Cart.* 5 Hen. VII. *Cowell*.

**SMAKA.** L. Lat. In old records. A small light vessel; a smack. *Cowell*.

**SMART MONEY.** In the law of damages. Vindictive, or exemplary damages. Damages beyond the value of a thing sued for, given by a jury in cases of gross misconduct or cruelty on the part of a defendant. See 14 *Johns. R.* 352. *Church, J.* 15 *Conn. R.* 225. *Sedgwick on Damages*, 39—45.

**SMOKE-FARTHING.** In old English law. An annual rent paid to cathedral churches; another name for the pentecos-

tals or customary oblations offered by the dispersed inhabitants within a diocese, when they made their processions to the mother cathedral church. *Cowell*.

**SMOKE-SILVER.** In English law. A sum paid to the ministers of divers parishes as a modus in lieu of tithe-wood. *Blount*.

**SO HELP ME GOD.** [L. Fr. *ci Dieu moy eyde*; L. Lat. *sic me Deus adjuvet*.] The formula with which an oath concludes when the words of it are repeated by the party swearing. See *So help you God, Oath*.

**SO HELP YOU GOD.** [L. Fr. *ci Dieu vous ayde*; L. Lat. *ita te Deus adjuvet*.] The formula with which the administration of an oath always concludes. Where the words of the oath are repeated by the party swearing, the expression is "*So help me God*," which seems to have been the more ancient form. The energy of this sentence, according to Dr. Paley, resides in the particle *so*; *so*, that is, *hac lege*, upon condition of my speaking the truth, or performing this promise, may *God help me*, and not otherwise. *Paley's Mor. Phil.* b. 3, c. 16. See *Oath, Saints*.

"**SO LONG,**" in a lease, [a lease for years, *so long* as the lessee shall duly pay the rent,] makes a limitation and not a condition. *Vaughan, C. J. Freem.* 25.

**SO THAT.** See *Ita quod*.

**SOBRE.** Span. [L. Lat. *supra*.] Above; over; upon. 15 *Texas R.* 586, 592.

**SOBRE-JUEZES.** Span. In Spanish law. Superior judges. *Las Partidas*, part. 3, tit. 4, l. 1.

**SOBRINI and SOBRINÆ.** Lat. In the civil law. The children of cousins german in general. *Cooper's Just. Inst. Notes*,\* 573. *Dig.* 38. 10. 3, pr.

**SOC, Sock, Sok, Soke.** Sax. [L. Lat. *soca, socha, soka*; from Sax. *socan*, to follow, or *socn*, a privilege.] In Saxon and old English law. A lord's privilege of having suit of court from his tenants; or the right of compelling the attendance of his tenants at his court. *Crabb's Hist.* 26, 27. *Spelman. Skene de Verb. Signif.*—A lord's power or jurisdiction to have a free court, to hold plea of contracts, covenants, and trespasses of his men and tenants. 2 *Inst.* 230. *Soc* and *sac*, (*sock* and *sack*, or *sok* and *sak*, or *soke* and *sake*,) are usually mentioned together in the old charters of liberties, and, thus united, express the full power of administering justice which was granted to the lord within his

manor or lordship; *soc*, giving the right to constitute a court, and *sac*, authority to try causes in it. *Spelman*. The words occur in Bracton in all the various forms above given. *Bract.* fol. 56, 122 b, 124 b.

**SOC, Soke.** L. Fr. [L. Lat. *soca, soccus*.] In old English law. A plough. *Litt.* sect. 119.

**SOCA, Socha.** L. Lat. *Soc*, or *sock*. See *Soc*. A seigniorship enfranchised by the king with liberty of holding a court of his sockmen or soccagers, i. e. his tenants. *Cowell*.

A liberty or privilege; a privileged place. *Spelman*.

A manor or lordship. *Id.* A part of a manor. *Id.*

**SOCAGE, Soccage.** [L. Lat. *socagium, sockagium*; from Sax. *soc*, or *socn*, a liberty or privilege; or Fr. *soke*; L. Lat. *soca, soccus*, a plough.] In English law. A tenure by any certain and determinate service. 2 *Bl. Com.* 79. Free socage, the most honorable species of this kind of tenure, is the tenure by which the great bulk of real property in England is now holden. *Id.* 89. See *Free socage*. For the history of this tenure in the United States, see 3 *Kent's Com.* 509—514. 4 *Id.* 2, 3.

As to the etymology of this word, there have been two opinions, each maintained by high authority; Littleton and Coke, who are followed by Sir Martin Wright, deriving it from the French *soc* or *soke*, a plough or plough-share, and Somner and Blackstone considering it as derived from Sax. *soc*, a franchise or privilege. *Litt.* sect. 119. *Co. Litt.* 86 b. *Wright on Tenures*, 143. *Somner's Gavelk.* 138. 2 *Bl. Com.* 80. Mr. Christian, in his note on the passage of Blackstone here referred to, expresses his preference of the derivation of Littleton and Coke, and quotes, in further support of their opinion, a passage from Bracton in which it is said,—*dici poterit sockagium à socko, et inde tenentes qui tenent in sockagio, sokemanni dici poterunt, eò quòd deputati sunt ut videtur tantummodo ad culturam*; (it may be called *socage* from *soccus*, and those that hold thereby, who hold in *socage*, may be called *sokemen*, because, as it seems, they are assigned only to the cultivation of the ground.) *Bract.* fol. 77 b. Mr. Stephen very properly observes of this passage, that it leans, though somewhat doubtfully, towards the derivation from the *plough*, and refers to another passage of Bracton, where

he applies *socagium* in a way which tends strongly to mark its identity with *privileged* tenure, and privileged as being *certain* in its services. 1 *Steph. Com.* 193, note (h.) See *Bract.* fol. 208 b, 209. Sir Henry Spelman, whose opinion might be decisive on this point, gives no formal definition of the word *socagium*, but, under the words *socmannus* and *socman*, quotes various passages from which it may be inferred that his opinion was in favor of the derivation from *soc*, a privilege. It may be added that the explanation of Skene, the Scotch expositor, tends to confirm the view of Somner and Blackstone.

**SOCAGIUM**, *Soccagium*, *Sockagium*, *Sokagium*. L. Lat. In old English law. Socage. *Glanv.* lib. 7, c. 1. *Bract.* fol. 77 b, 209. *Mag. Cart.* 9 Hen. III. c. 27.

A plough-land; a portion of land set apart for the support of one family in the country. *Spelman*.

**SOCER**. Lat. In the civil law. A wife's or husband's father; a father-in-law. *Dig.* 38. 10. 4. 6. *Calv. Lex.* *Cooper's Just. Inst. Notes*,\* 429. See *Dig.* 50. 16. 146.

**SOCIEDAD**. Span. [from Lat. *societas*, q. v.] In Spanish law. Partnership. *Schmidt's Civ. Law*, 153, 154.

**SOCIETAS**. Lat. [from *socius*, q. v.] In the civil law. Partnership; a partnership; the contract of partnership. *Inst.* 3. 26. *Dig.* 17. 2. 1.—A contract by which the goods or labor of two or more are united in a common stock, for the sake of sharing in the gain. *Hallifax, Anal.* b. 2, c. 18, num. 12. A species of consensual contract. *Heinecc. El. Jur. Civ.* lib. 3, tit. 26, § 942. See *Vinnius ad Inst.* lib. 3, tit. 26, *Introd.* *Dig.* 17. 2. 1, *et seq.* Called, in old English law, *society*. See *Partnership*.

In old English law. Complicity in crime. *Fleta*, lib. 1, c. 38, § 18.

**SOCIETAS NAVALIS**. Lat. In European law. Naval partnership or company; the sailing of a number of vessels in company, for mutual protection. Otherwise called *admiralitas*. *Loccen. de Jur. Mar.* lib. 2, c. 2. *Id.* lib. 3, c. 7.

**SOCIETE**. Fr. [from Lat. *societas*, q. v.] In French law. Partnership. See *Commendam*.

**SOCIETY**. [Lat. *societas*.] In old English law. Partnership. See *Partnership*.

**SOCII**. Lat. [plur. of *socius*, q. v.] In old English law. Fellows; associates. A

title given, in *Fleta*, to the old masters in chancery. *Fleta*, lib. 2, c. 13, § 12. But improperly, according to the "Treatise of the Maisters of the Chauncerie."

**SOCIUS**. Lat. In the civil law. A partner. *Solvitur adhuc societas etiam morte socii*; a partnership is also dissolved by the death of a partner. *Inst.* 3. 26. 5. *Dig.* 17. 2. *Pro socio*. *Socii mei socius meus socius non est*. The partner of my partner is not my partner. *Dig.* 17. 2. 20. *Id.* 50. 17. 47. 1. This principle is also recognized in the common law. A person may become a partner with one individual of a partnership, without being concerned in that partnership. 3 *Kent's Com.* 52, and note.

In old English law. An associate or companion in crime; an accomplice. *Fleta*, lib. 1, c. 38, § 17. *Socius criminis*. 2 *Alis. Crim. Pr.* 452.

In practice. An associate justice or judge. 1 *Leon*. 90.

**SOCMAN**, *Sokman*, *Sokeman*. Sax. [from *soc*, privilege, and *man*.] In old English law. A tenant by socage. *Bract.* fol. 77 b. A tenant in ancient demesne. *Spelman*, citing *O. N. B. Britt.* c. 66. A tenant in villenage. *Spelman*. Rather a tenant in privileged villenage; a tenant by certain villein services. *Bract.* fol. 208 b, 209. *Fleta*, lib. 1, c. 8, § 3.

A freeman. *Spelman*, citing *Lib. S. Albani*, tit. *Houcton*, c. 1.

**SOCMANNUS**, *Sokmannus*, *Sokemanus*. L. Lat. A socman, or sokeman. *Spelman. Bract.* fol. 77 b, 209. *Fleta*, lib. 1, c. 8, § 3. *Id.* lib. 3, c. 16, § 3. *Id.* lib. 5, c. 6, § 11. See *Socman*.

**SOCNA**. L. Lat. [Sax. *socne*.] In old records. A privilege; a liberty or franchise. *Cowell*.

**SOCRUS**. Lat. In the civil law. A husband's or wife's mother. *Inst.* 1. 10. 7. *Dig.* 38. 10. 4. 6. See *Id.* 50. 16. 146.

**SOCURER**. L. Fr. To help, or aid; to relieve or succor. *Britt.* c. 42, 54, 77.

**SOEFFRE**. L. Fr. To suffer; to permit; to forbear. *Kelham*.

**SOEN**, *Sien*, *Syen*. L. Fr. Own; one's own; his own; his; his people or agents. *Kelham. De soen roiaume*; of his own realm. *Art. sup. Cart. En soen parlement. Id.*

**SOER**, *Soieur*. L. Fr. Sister; a sister. *Britt.* c. 89, 119.

**SOIGNER**. L. Fr. To excuse. *Kelham*.

**SOIL**, *Soile, Soyle, Soylle*. L. Fr. and Eng. [from Lat. *solum*.] In old English law. Land; ground; earth. *Dount ascun soil acrest par petyt et par petyt*; whereby any land forms by little and little, [by slow accretions.] *Britt. c. 33. Isle fait per la meer en ascun soil. Id. ibid. Deux soilz*; two lands. *Id. c. 55. In auter soile*; in another's land. *Dyer, 36 b.*

**SOIT**, *Soiet*. L. Fr. Be; is; it be; be it; let it be. *Si don soit fait*; if a gift be made. *Britt. c. 36. Soient, soint*; are; they are; let them be; they should be. *Kelham. Britt. passim.*

**SOIT BAILE AUX COMMONS**. L. Fr. Let it be delivered to the commons. The form of indorsement on a bill when sent to the House of Commons. *Dyer, 93 a.*

**SOIT BAILE AUX SEIGNEURS**. L. Fr. Let it be delivered to the lords. The form of indorsement on a bill in parliament when sent to the House of Lords. *Hob. 111 a.*

**SOK**, *Soke*. Sax. and O. Eng. In old English law. The lord's right of having suit of tenants; (*libertatem cur' tenentium*.) *Keilw. 145. Bract. fol. 54, 124 b. Fleta, lib. 1, c. 47, § 6. See Sac.*

**SOKA**. L. Lat. In old English law. Sok or soke, (q. v.) *Fleta, lib. 1, c. 47, § 6. An assembly of tenants. Id. lib. 1, c. 8, § 2.*

**SOKE**. L. Fr. A plough. *Vener ove lour sokes*; to come with their ploughs. *Litt. sect. 119.*

**SOKEMANNES**. L. Fr. In old English law. Soemen. *Britt. fol. 164, 165, 212 b, 278 b.*

**SOKEREVE**. [L. Lat. *sokereva*.] In old English law. An officer who collected rents of tenants. *Fleta, lib. 2, c. 55, § 2.*

**SOLAR**. Span. [from Lat. *solum*, q. v.] In Spanish law. Land; the demesne, with a house, situate in a strong or fortified place. *White's New Recop. b. 1, tit. 5, c. 3, § 2. De solar*; landed. *Id. ibid.*

**SOLAR DAY**. That period of time which begins at sunrise and ends at sunset. *Co. Litt. 135 a.*

**SOLAR MONTH**. A calendar month, (q. v.) *Co. Litt. 135 b.*

**SOLARIUM**. Lat. [from *sol*, the sun.] In the Roman law. A place in the upper part of a house, exposed to the rays of the sun; an apartment for basking in the sun; a terrace or gallery where they walked to

sun themselves; a solar. *Calv. Lex. Adam's Rom. Ant. 575.*

In old English records. An upper room, chamber or garret; in some parts of England called a *sollar*, or *soller*. *Spelman. Cowell.*

**SOLARIUM**. Lat. [from *solum*, soil or ground.] In the civil law. A rent paid for the ground, where a person built on the public land. *Calv. Lex.* A ground rent. 1 *Muckeld. Civ. Law, 363, § 329. Spelman. Cod. 8. 10. 5.*

The lower part of a house. *Spelman.*

**SOLD NOTE**. A note or memorandum of sale, given by the broker effecting it to the buyer. *Story on Ag. § 28.*

**SOLDARIUS**, *Solidarius, Sollidarius, Soldurius*. L. Lat. [from Germ. *solid*, *sould*, a stipend.] In old English law. A soldier; a mercenary. *Spelman. LL. Hen. I. c. 9.*

*Soldum, solidata*. The pay or stipend of a soldier. *Spelman.*

**SOLE**. L. Fr. and Eng. [from Lat. *solus*, alone.] Single; alone; composed of a single person. See *Corporation sole, Feme sole.*

**SOLEMN**. [L. Lat. *solemnis, solempnis, solennis*; L. Fr. *solempne*.] Formal; in regular form; with all the forms of a proceeding. See *infra*.

**SOLEMN WAR**. [Lat. *bellum solenne, or justum*.] In international law. A war made in form. *Grotius De Jure Belli, lib. 1, c. 3, § 4.* A war by public declaration. Cowen, J. 1 *Hill's R.* 409. A war solemnly declared by one state against another. *Molloy de Jure Mar. 5.*

In modern times, the practice of a solemn declaration made to the enemy has fallen into disuse, and the nation contents itself with making a public declaration of war within its own territory, and to its own people. 1 *Kent's Com.* 53.

**SOLEMNES LEGUM FORMULÆ**. Lat. In the civil law. Solemn forms of laws; forms of forensic proceedings and of transacting legal acts. One of the sources of the unwritten law of Rome. *Butler's Hor. Jur. 47.*

**SOLEMNITAS**. Lat. [from *solemnis, solemn*.] A solemnity; a solemn form; a formal observance; a proceeding according to strict and regular form. *Solemnitas intervenire debet in mutatione liberi testamenti, ne contingat donationem deficere pro defectu probationis*; solemnity ought to be observed on the change of [ownership of]

a freehold, lest it happen that the gift fail for want of proof. *Co. Litt.* 48 a.

**SOLEMNITAS ATTACHIAMENTORUM.** L. Lat. In old English practice. Solemnity or formality of attachments. The issuing of attachments in a certain formal and regular order. *Bract.* fol. 439, 440. 1 *Reeves' Hist. Eng. Law*, 480. *Fleta*, lib. 2, c. 65, § 5.

**SOLEMPNE.** L. Fr. Solemn. *Britt.* c. 26. *Solempne crie*; solemn proclamation. *Id.* c. 121, fol. 279.

**SOLEMPNITE.** L. Fr. In old English law. Solemnity; formality. *Stat. Mod. Lev. Fines. Solempnite de attachementz.* *Britt.* c. 36. *Solempnite des espousailles*; solemnization of marriage. *Kelham.*

**SOLICITOR.** In practice. A person authorized to appear and act for parties to suits in chancery. The professional designation of persons admitted to practice in courts of chancery or equity, corresponding with *attorney* at common law.\* 3 *Bl. Com.* 26. 3 *Steph. Com.* 331—335.

**SOLICITOR-GENERAL.** In English law. A law officer of the crown appointed by patent during the royal pleasure, and who has the care and concern of managing the sovereign's affairs. *Wharton's Lex.*

**SOLIDATA.** L. Lat. [from *solidus*, a shilling.] In old English law. A shilling rent. *Fleta*, lib. 4, c. 5, § 6. *Id.* lib. 6, c. 22, § 1.

**SOLIDUM.** Lat. In the civil law. A whole; an entire or undivided thing. See *In solidum.*

**SOLIDUS.** L. Lat. In old English law. A shilling. *Co. Litt.* 294 b. *Fleta*, lib. 2, cc. 9, 10, 11, 12.

**SOLINUM.** L. Lat. In old English law. Two plough-lands, and somewhat less than a half. *Co. Litt.* 5 a. Spelman defines it a plough-land.

**OLONQUE, Solonc, Soloine.** L. Fr. After; according to. *Kelham. Yearb.* P. 1 Edw. II. 5.

**SOLUM.** Lat. In the civil law. The soil; land; ground. *Solo cedit quod solo inædificatur.* That which is built upon the soil belongs to the soil. The proprietor of the soil becomes also proprietor of the building erected upon it. 1 *Mackeld. Civ. Law*, 181, § 268. *Omne quod inædificatur solo cedit.* *Dig.* 41. 1. 7. 10.

*Solo cedit quod solo implantatur.* That which is planted in the soil belongs to the soil. The proprietor of the soil becomes

also the proprietor of the seed, the plant and the tree, as soon as these have taken root. 1 *Mack. Civ. Law*, 181, § 268.

**SOLUTIO.** Lat. [from *solvere*, to pay.] In the civil law. Payment. *Tollitur omnis obligatio solutione ejus quod debetur*; every obligation is dissolved by the payment of what is due. *Inst.* 3. 30, pr. See *Fleta*, lib. 2, c. 60, § 25.

The satisfaction or discharge of an obligation in any way; release from obligation. *Dig.* 50. 16. 176. *Id.* 46. 3. 54.

*Solutio pretii emptionis loco habetur.* The payment of the price [of a thing] is held to be in place of a purchase, [operates as a purchase.] *Jenk. Cent.* 56, case 2. 2 *Kent's Com.* 387.

**SOLUTIO INDEBITI.** Lat. In the civil law. Payment of what is not due; payment, by mistake, of money not due. *Inst.* 3. 28. 6. 1 *Kames' Equity*, 303.

A contract by which he who, by mistake, had been paid what was not due to him, was bound to make restitution to the person who had paid him. *Hallifax, Anal.* b. 2, c. 19, num. 7.

**SOLUTUS.** Lat. [from *solvere*, to loose.] In the civil law. Loosed; freed from confinement; set at liberty. *Dig.* 50. 16. 48.

In Scotch practice. Purged. A term used in old depositions. See *Purged of partial counsel.*

**SOLVABILITÉ.** Fr. In French law. Ability to pay; solvency. *Emerig. Tr. des Ass.* ch. 8, sect. 15.

**SOLVENCY.** [from Lat. *solvere*, to pay; Fr. *solvabilité.*] Ability to pay; present ability to pay; ability to pay all that one owes; ability to pay one's debts out of one's own present means. See 4 *Hill's (N. Y.) R.* 652. See *Solvent, Insolvency.*

**SOLVENDO.** Lat. Paying. An apt word of reserving a rent in old conveyances. *Co. Litt.* 47 a.

**SOLVENDO.** Lat. In the civil law. Solvent; able to pay; able to pay in full. *Solvendo esse nemo intelligitur nisi qui solidum potestolvere.* No one is understood [or considered] to be solvent, but him who can pay the whole. *Dig.* 50. 16. 114.

**SOLVENDUS.** Lat. In old English law. To be paid. *Fleta*, lib. 2, c. 64, § 3.

**SOLVENT.** [Lat. *solvens*, paying, from *solvere*, to pay.] Able to pay; able to pay in full; able to pay all just debts; able to pay out of present means; able to pay out of one's own means; able to pay one's debts in full out of one's own present

means.\* 4 *Hill's* (N. Y.) *R.* 452, Cowen, J.

That *solvent* implies a *present* ability to pay, appears from the formation of the word itself, from the *present* participle (*solvens*) of the Latin *solvere*. It appears still more strikingly in the form of the corresponding civil law term *solvendo*, which literally signifies "*in paying*," or, as we might say, "*in paying condition*," clearly implying present capacity or power. Ability to pay *in full*, has also always been considered an essential element of solvency. This is shown in the civil law definition of the term *solvendo*, (q. v.) which has been formally adopted in the Civil Code of Louisiana. Art. 3522, n. 28.

**SOLVERE.** Lat. In the civil law. To pay. *Nec interest quis solvat*; nor does it matter who pays. *Inst.* 3. 30, pr.

To comply with one's engagement; to do what one has undertaken to do. *Solvere dicimus eum qui fecit quod facere promisit.* *Dig.* 50. 16. 176.

To loosen or disengage; to release one's self from obligation, as by payment of a debt. *Calv. Lex.*

**SOLVIT.** Lat. [from *solvere*, q. v.] He paid; paid. 10 *East*, 206.

**SOLVIT AD DIEM.** L. Lat. He paid at the day. The technical name of the plea, in an action of debt on bond, that the defendant paid the money *on the day* mentioned in the condition. 1 *Arch. N. Prius*, 220, 221.

**SOLVIT POST DIEM.** L. Lat. He paid after the day. The technical name of the plea in an action of debt on bond, that the defendant paid the money *after the day* named for the payment, and before the commencement of the suit. 1 *Arch. N. Pr.* 222.

**SOMOUNS.** L. Fr. Summons; a summons. *Britt. c.* 74.

**SON.** Fr. His. Declared, by the Civil Code of Louisiana, to be applicable to females as well as males. Art. 3522, num. 1.

**SON ASSAULT DEMESNE.** L. Fr. His own assault. The name of the plea to an action of trespass and assault, that it was the plaintiff's *own assault* that occasioned the injury, or that it was done by the defendant in his own defence against the plaintiff's first assault. 3 *Bl. Com.* 120, 121. *Steph. Pl.* 163.

**SONIUM, Sonius, Sunium, Sonnium, Sunnium, Sunius, Somnus, Somnis.** L.

Lat. In old European law. An excuse for not appearing in court; an impediment; an *essoïn*. *Spelman.*

**SONTICUS.** Lat. [from O. Lat. *son-tive*, to hurt or hinder.] In the civil law. That which hurts, or hinders; that which tends to delay or put off; that which authorizes or excuses delay. A term applied in the Twelve Tables, to a serious illness, (*morbis sonticus*), by which a defendant was prevented from appearing in court, and was for that reason excused. *Calv. Lex. A. Gell. Noct. Att.* xx. 1. 27. Hence *causa sontica*; a valid excuse for not appearing in court. *Adam's Rom. Ant.* 245, 272.

There are reasons for supposing this word to be the origin of *essoïn*, (q. v.) though the latter word is usually very differently derived.

**SORNER.** In Scotch law. A person who takes meat and drink from others by force or menaces, without paying for it. *Bell's Dict.*

**SOROR.** Lat. In the civil law. Sister; a sister. *Inst.* 3. 6. 1. Derived by the jurist Antistius Labeo, from *seorsum*, apart, because she is born as it were *apart*, and is separated from the house in which she was born, and passes into another family, (*soror appellata est, quod quasi seorsum nascitur, separaturque ab ea domo in qua nata est, et in aliam familiam transgreditur.*) This is pronounced by Gellius an ingenious and subtile etymon. *Noct. Att.* xiii. 10.

**SORS.** Lat. In the civil law. A lot; chance; hazard; fortune. *Calv. Lex.*

The capital stock of a partnership, (*prima pecunia quæ confertur in societatem, ut inde lucrum fiat.*) *Id. Grotius de Jur. Bell.* lib. 2, c. 12, § 24, num. 2.

A principal sum of money, as distinguished from interest. *Id.* Used in this sense in old English records. *Super trecentas marcas de sorte, et centum marcas de interesse*; for three hundred marks of principal, and a hundred marks of interest. *Cowell.* See *Interesse.* *Et si debitum Judæi in manum regis devenerit, non capiet rex nisi sortem, hoc est, catallum in charta contentum*; and if the debt of a Jew falls into the hands of the king, the king shall claim nothing but the principal, that is, the chattel contained in the deed. *Fleta*, lib. 2 c. 57, § 8.

A thing recovered in an action, as distinguished from the costs of the action. *Clerke's Praz. Cur. Adm.* tit. 11.

**SORTITIO.** Lat. [from *sortiri*, to cast or draw lots.] In the civil law. A casting or drawing of lots; a determination or choice by lot. *Sortitio judicum*; a drawing of judges, (*judices*.) on criminal trials, resembling the modern practice of drawing a jury.\* *Hallifax, Anal.* b. 3, c. 13, num. 20. 3 *Bl. Com.* 366.

**SOT.** L. Fr. A fool. *Britt.* c. 36. Probably a corruption of *fol*, which, in print, resembles it.

**SOUB, Soubs.** L. Fr. Under. *Kelham.*

**SOUL-SCOT.** [Sax. *saulsceat*, from *saul*, soul, and *sceat*, a payment.] In Saxon law. A mortuary; a bequest of a thing to the church, as a kind of spiritual expiation and amends for the delinquencies of the giver. See *Mortuary.* 2 *Bl. Com.* 425.

**SOULZE.** *Souz, Souce.* L. Fr. A shilling. *Kelham.*

**SOUN.** L. Fr. His. *Yearb.* P. 1 Edw. II. 6.

To **SOUND.** To have an essential quality. An action is technically said to *sound in damages*, where it is brought not for the specific recovery of a thing, but for damages only. See *Steph. Pl.* 105.

**SOURD.** L. Fr. [from Lat. *surdus*.] Deaf. *Britt.* c. 34.

**SOURNOUN.** L. Fr. A surname. *Fet Assaver*, § 33.

**SOUTH.** L. Fr. Under. *Litt.* sect. 139. *South boys*; underwood. *Kelham.* *South viscount*; under sheriff. *Stat. Westm.* 1, c. 15. *Southscripts*; underwritten. *Id.* *South dean*; sub dean. *Yearb.* M. 9 Edw. III. 33.

**SOVENT.** L. Fr. Often. *Trop sovent*; too often. *Artic. sup. Chart.* c. 13.

**SOVERTIE.** Sc. In old Scotch law. Surety. *Skene de Verb. Signif.*

**SOWMING AND ROWMING.** In Scotch law. Terms used to express the form by which the number of cattle brought upon a common by those having a servitude of pasturage may be justly proportioned to the rights of the different persons possessed of the servitude. *Bell's Dict.*

To **SOWNE.** In old English law. To be leviable. An old Exchequer term applied to sheriff's returns. "Estreats that *sowne* not," were such as the sheriff could not collect. 4 *Inst.* 107. *Cowell. Spelman.* Cowell supposes it to be a corruption of the Fr. *souvenu*, remembered.

**SOY, Soi.** L. Fr. His; himself. *Soy defendaut*; defending himself; in self defence. *Britt.* c. 23.

**SOYT, Soyte.** Sc. In old Scotch law. Suit; suit to court. *Skene de Verb. Sign. voc. Sok.*

*Soytor*; suitor. *Id. ibid.*

**SPARSIM.** Lat. [from *spargere*, to scatter.] Scattered about; here and there. 2 *Bl. Com.* 283.

**SPEAK TO.** In practice. To argue. "The case was ordered to be *spoke to* again." 10 *Mod.* 107. 2 *Wash. (Va.) R.* [266,] 339.

**SPECIAL AGENT.** An agent who is appointed or constituted for a special purpose. 2 *Kent's Com.* 620. Such an agent has no discretion, but his authority must be strictly pursued. *Id. ibid.* and note.

**SPECIAL BAIL.** In practice. Bail to the action, given by a defendant as a security to abide the event of it. See *Bail to the action.*

**SPECIAL BASTARD.** In English law. One born before marriage of parents who intermarry afterwards. *Blackst. Mag. Cart.* Intr. lxxxi. Special bastardy *Id.* lxxxv.

**SPECIAL CASE.** See *Case.*

**SPECIAL DAMAGES.** In practice. Damages not necessarily resulting from an injury complained of; damages which require to be specially stated, and will not be implied by law.\* Where the damages, though the natural consequence of the act complained of, are not the necessary result of it, they are termed *special damages*, which the law does not imply; and therefore, in order to prevent a surprise upon the defendant, they must be particularly specified in the declaration, or the plaintiff will not be permitted to give evidence of them at the trial. 2 *Greenl. Evid.* § 254.

**SPECIAL DEMURRER.** In pleading. A demurrer to a pleading on the ground of some defect of form, which is specially set forth. See *Steph. Pl.* 140, 141. *Mansel on Demurrer*, 2, 97.

**SPECIAL INJUNCTION.** In practice. An injunction by which parties are restrained from committing waste, damage or injury to property. 4 *Steph. Com.* 12, note (z.)

**SPECIAL ISSUE.** In pleading. An issue produced upon a special plea. *Steph. Pl.* 162. So called, as being usually more specific and particular than the general issues. *Id. ibid.*

**SPECIAL JURY.** In practice. A jury ordered by the court, on the motion of either party, in cases of unusual importance

or intricacy. Called, from the manner in which it is constituted, a *struck jury*. 3 *Bl. Com.* 357. 3 *Steph. Com.* 591. 1 *Tidd's Pr.* 787—793. See *Struck jury*.

**SPECIAL OCCUPANT.** A person having a special right to enter upon and occupy lands granted *pur auter vie*, on the death of the tenant, and during the life of *cestui que vie*. Where the grant is to a man and his heirs during the life of *cestui que vie*, the heir succeeds as special occupant, having a special exclusive right by the terms of the original grant. 2 *Bl. Com.* 259. 1 *Steph. Com.* 416. This doctrine of *special occupancy* has been adopted in some of the United States, but is not recognized in others. See 4 *Kent's Com.* 27. Where a wife is tenant *pur auter vie*, and dies during the life of *cestui que vie*, the husband becomes the special occupant. 2 *Id.* 134.

**SPECIAL PLEA.** A special kind of plea in bar, distinguished by this name from the general issue, and consisting usually of some new affirmative matter, though it may also be in the form of a traverse or denial. See *Steph. Pl.* 52, 162.

**SPECIAL PLEADER.** In English practice. A person whose professional occupation is to give verbal or written opinions upon statements made verbally or in writing, and to draw pleadings, civil or criminal, and such practical proceedings as may be out of the usual course. 2 *Chitt. Gen. Pr.* 42.

**SPECIAL PLEADING.** The popular denomination of the science of pleading, so called, as Mr. Stephen seems to suppose, from the *special pleas* which occupy a prominent place in it. See *Steph. Pl.* 162, note. Perhaps the term *special* may have been used to distinguish it from *pleading*, which, in the popular sense, imports oral argument at the bar.

**SPECIAL PARTNER.** A partner with a limited or restricted responsibility; a limited partner.\* 3 *Kent's Com.* 34. A member of a limited partnership, who furnishes certain funds to the common stock, and whose liability extends no farther than the fund furnished. *Id.* 35.

**SPECIAL PARTNERSHIP.** A partnership limited to a particular branch of business, or to one particular subject.\* 3 *Kent's Com.* 30. *Story on Partn.* § 75.

**SPECIAL PROPERTY.** A property of a special, qualified or temporary kind,

arising from the peculiar circumstances under which it is acquired; such as the property of the finder of a thing lost, until the right owner is discovered, and the property of a sheriff in goods taken in execution, between the time of seizure and actual sale. 2 *Steph. Com.* 73, 74.

**SPECIAL RULE.** In practice. A rule granted upon the actual motion of counsel in court; as distinguished from a *common rule*, or rule of course. 1 *Tidd's Pr.* 485.

**SPECIAL SERVICE.** In Scotch law. That form of service by which the heir is served to the ancestor who was feudally vested in the lands. *Bell's Dict.* See *Service*.

**SPECIAL TRAVERSE.** In pleading. A peculiar form of traverse or denial, the design of which, as distinguished from a *common traverse*, is to explain or qualify the denial, instead of putting it in the direct and absolute form. It consists of an affirmative and a negative part; the first setting forth the new affirmative matter tending to explain or qualify the denial, and technically called the *inducement*; and the latter constituting the direct denial itself, and technically called the *absque hoc*. *Steph. Pl.* 169—180.

**SPECIAL VERDICT.** In practice. A special finding of the facts of a case by a jury, leaving to the court the application of the law to the facts thus found. 1 *Arch. Pr.* 213. 3 *Bl. Com.* 377. 2 *Tidd's Pr.* 897. It must state the facts as proved, and not the evidence given to prove the facts. 5 *Hill's (N. Y.) R.* 634. 4 *Id.* 171.

**SPECIALIS.** L. Lat. In old practice. Special. *Exceptio specialis*; a special exception or plea. *Fleta*, lib. 2, c. 60, § 36.

**SPECIALTY.** A contract or obligation under seal. *Chitty on Contr.* 3. A contract by deed; an instrument in writing, sealed and delivered. See *Deed*.

**SPECIALTY DEBT.** A debt due, or acknowledged to be due by deed, or instrument under seal. 2 *Bl. Com.* 465.

**SPECIES.** Lat. In the civil law. Form; figure; fashion or shape. A form or shape given to materials. *Cum ex aliena materia species aliqua facta sit ab aliquo, quæri solet quis eorum naturali ratione dominus sit*; where any form has been made by any one out of another's material, it is often asked which of them ought, in natural reason, to be deemed the owner. *Inst.* 2.

1. 25. 1 *Mackeld. Civ. Law*, 277, § 265. See *Specification*.

A thing made, formed or shaped out of any substance or material, (*materia*.) *Fleta*, lib. 3, c. 2, § 14.

SPECIES. Lat. A particular thing; as distinguished from *genus*, (q. v.)

SPECIES FACTI. Lat. In Scotch law. The particular criminal act charged against a person. "The *species facti* amounted to robbery." 2 *Brown's R.* 446.

SPECIFIC. Having a certain form or designation; observing a certain form; particular; precise.

SPECIFIC LEGACY. A legacy or gift, by will, of a particular specified thing, as of a horse, a piece of furniture, a term of years and the like. *Ward on Legacies*, 16.

In a strict sense, a legacy of a particular chattel, which is specified and distinguished from all other chattels of the testator of the same kind; as of a horse of a certain color. See *Id.* 17.

A legacy of a quantity of chattels described collectively, as a gift of all the testator's pictures. *Id.* 18.

SPECIFIC PERFORMANCE. Performance of a contract in the precise form, or according to the precise terms agreed upon; strict performance. This is frequently compelled by a bill in equity filed for the purpose. See 2 *Story's Eq. P.* § 712, *et seq.*

SPECIFICATIO. Lat. [from *species*, form, and *facere*, to make.] In the civil law. Literally, a making of form; a giving of form to materials. That mode of acquiring property through which a person, by transforming a thing belonging to another, especially by working up his materials into a new species, becomes proprietor of the same. 1 *Mackeld. Civ. Law*, 277, § 265. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 368. The making of wine, oil or flour, out of the grapes, olives or wheat of another, were common instances of *specificatio*. *Inst.* 2. 1. 25. *Fleta*, lib. 3, c. 2, § 14.

SPECIFICATION. In patent law. A particular description. A written description of an invention or discovery, and of the manner and process of making, constructing, using and compounding it; expressed in full, clear and exact terms, so as to enable any person skilled in the art or science to which it appertains, to make,

construct, compound and use it.\* See 2 *Kent's Com.* 366.

SPECIOSUS. Lat. In the civil law. Distinguished. *Dig.* 50. 16. 100.

SPECULUM. Lat. [Germ. *spiegel*.] Mirror or looking-glass. The title of several of the most ancient law books or compilations. One of the ancient Icelandic books is styled *Speculum Regale*. In the preface to this work, four others, bearing the same title of *Speculum*, are referred to. There is also a collection of the ancient laws of Pomerania and Prussia, under the same title. *Barringt. Obs. Stat.* 1, 2, note [b.] See *Mirror*.

SPECUS. Lat. In the civil law. A subterranean passage for water. A word not very satisfactorily defined in the Digests as *locus ex quo despicitur*. *Dig.* 43. 21. 1. 3.

SPERVARIUS, *Sparvarius*, *Sparverius*. L. Lat. In old English law. A sparrow-hawk, or spar-hawk. *Mem. in Scacc.* 22 Edw. I. *Fleta*, lib. 2, c. 41, § 7. *Spelman*, voc. *Sparverius*.

SPES ACCRESCENDI. Lat. Hope of surviving. 3 *Atk.* 762. 2 *Kent's Com.* 424.

SPES RECUPERANDI. Lat. Hope of recovering (a prize or captured vessel.) 1 *Kent's Com.* 101.

SP'IALIS. A contraction of *specialis*. 1 *Inst. Cler.* 13.

SPINSTER. The addition given to unmarried women, in legal proceedings, and in conveyancing. The term "single woman" is now generally used in its place. *Spinster* is said in *Dyer* to be an indifferent addition to a man as well as a woman. *Dyer*, 47.

SPIRITUAL COURTS. In English law. The ecclesiastical courts, or courts christian. See 3 *Bl. Com.* 61.

SPITTAL. An old form of *hospital*. 1 *P. Wms.* 426.

SPOLIATIO. Lat. [from *spoliare*, to despoil.] In old English law. Forcible deprivation of possession; disseisin. *Fleta*, lib. 4, c. 2.

SPOLIATION. [Lat. *spoliatio*, from *spoliare*, to despoil or rob.] In English ecclesiastical law. An injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right to them, but under a pretended title. 3 *Bl. Com.* 90, 91.

A violent deprivation of possession. 4 *Reeves' Hist. Eng. Law*, 18.

In the law of evidence. Destruction of a thing by the act of a stranger; the era-

sure, alteration, mutilation or defacement of a writing by the act of a stranger. See 1 *Greenl. Evid.* § 566.

**SPOLIATOR.** Lat. [from *spoliare*, to despoil.] In old English law. A despoiler; a disseisor. *Fleta*, lib. 4, c. 2, §§ 19, 20, 22.

A destroyer (of a deed.) See *In odium spoliatoris*.

**Spoliatus debet ante omnia restitui.** A party despoiled [forcibly deprived of possession] ought first of all to be restored. 2 *Inst.* 714. 4 *Reeves' Hist.* 18.

**SPOLIUM.** Lat. In the civil and common law. A thing violently or unlawfully taken from another. 1 *Mackeld. Civ. Law*, (by Kaufmann,) 261, note.

**SPONDEO.** Lat. In the civil law. I undertake; I engage. *Inst.* 3. 16. 1. *Id.* 3. 17, pr.

**SPONDERE.** Lat. In the civil law. To engage; to undertake; to stipulate, or stipulate for.

**Spondet peritiam artis.** He promises the skill of his art; he engages to do the work in a skilful or workmanlike manner. 2 *Kent's Com.* 588. Applied to the engagements of workmen for hire. *Id. ibid. Story on Bailm.* § 428.

**SPONDES? SPONDEO.** Lat. Do you undertake? I do undertake. The most common form of verbal stipulation in the Roman law. *Inst.* 3. 16. 1.

**SPONSALIA.** Lat. [from *spondere*, to engage.] In the civil and canon law. Spousals, or espousals; betrothment; affiancement. A mutual contract of future marriage. *Calv. Lex. Dig.* 23. 1. *Shelf. Marr. & Div.* 28. *Sponsalia sunt mutua repromissio futurarum nuptiarum, rite inter eos quibus jure licet, facta*; spousals are a mutual promise of future marriage; duly made between those persons to whom it is allowed by law. *Swinburne on Spousals*, 8. The passage in the Digests from which this seems to be taken, reads—*sponsalia sunt mentio et repromissio nuptiarum futurarum*; spousals are the mention and promise of future nuptials. *Dig.* 23. 1. 1.

*Sponsalia de futuro*; a mutual promise of marriage to be had afterwards. As when a man said to a woman, "I will take thee to my wife," and she answered, "I will take thee to my husband." *Swinb. on Spousals*, 8.

*Sponsalia de presenti*; a mutual promise of present matrimony. As when the man said to the woman, "I do take thee

to my wife," who then answered, "I do take thee to my husband." *Id. ibid. Shelf. Marr. & Div.* 26, 27. See *Hubbuck's Evid. of Succession*, 298.

**SPONSALIA.** Lat. In the common law. Spousals; actual marriage. *Co. Litt.* 34 a. *Hargrave's note*, 210. See *Fleta*, lib. 3, c. 11. *Id.* lib. 6, c. 39.

**SPONSIO.** Lat. [from *spondere*, to engage.] In the civil law. An engagement or undertaking; particularly such as was made in the form of an answer to a formal interrogatory by the other party. *Calv. Lex. Dig.* 50. 16. 7. See *Spondes*.

An engagement to pay a certain sum of money to the successful party in a cause. *Calv. Lex.*

**SPONSIO LUDICRA.** Lat. In Scotch law. A trifling or ludicrous engagement, such as a court will not sustain an action for. 1 *Kame's Equity*, Introd. 34.

In the civil law, this term seems to have signified an informal undertaking, or one made without the usual formula of interrogation. *Calv. Lex.* citing *Budæus*.

**SPONSIONS.** [Lat. *sponsiones*, from *spondere*, to engage.] In international law. Engagements made on behalf of states by agents not specially authorized, or exceeding the limits of the authority under which they purport to be made; and which, to be valid, must be confirmed by express or tacit ratification. Such as the official acts of admirals and generals suspending or limiting hostilities, capitulations of surrender, cartels of exchange, &c. See *Grotius de Jure Belli*, lib. 2, c. 15, § 16. *Id.* lib. 3, c. 22, §§ 1—3. *Wheaton's Internat. Law*, part 3, ch. 2, §§ 3, 4.

**SPONTE** virum mulier fugiens et adultera facta  
Dote sua careat, nisi sponsi sponte retracta.

A woman voluntarily leaving her husband and becoming an adulteress shall forfeit her dower, unless taken back by the free act of the husband. *Co. Litt.* 32 b. An old rhyming Latin couplet, framed to express the principle that a wife's dower is forfeited by her adulterous elopement. See 2 *Kent's Com.* 52, *et seq.*

**SPORTULA.** Lat. In the Roman law. A largess, dole, or present; a pecuniary donation; an official perquisite; something over and above the ordinary fee allowed by law. *Inst.* 4. 6. 24. See *Brissonius*.

Costs of suits. *Nov.* 82, c. 7.

**SPOUSALS.** [Lat. *sponsalia*.] In old English law. Mutual promises to marry. See *Sponsalia*.

**SPOUSE-BREACH.** In old English law. Adultery. *Cowell.*

**SPREN.** O. Eng. In old records. Broken wood or wind-fall. *Cowell.*

**SPRING-BRANCH.** In American land law. A branch of a stream, flowing from a spring. 12 *Grattan's R.* 196.

**SPRINGING USE.** A use limited to arise on a future event, where no preceding estate is limited, and which does not take effect in derogation of any preceding interest. If a grant be to A. in fee, to the use of B. in fee, after the first day of January next, this is an instance of a springing use, and no use arises until the limited period. The use, in the mean time, results to the grantor, who has a determinable fee. 4 *Kent's Com.* 297, 298. See 1 *Steph. Com.* 502. 2 *Crabb's Real Prop.* 498, § 1689.

**SPUILZIE, Spulzie.** In Scotch law. The taking away of one's movables, without order of law, or consent of the owner. 1 *Forbes' Inst.* part 2, p. 200. *Bell's Dict.*

**SPURIUS.** Lat. In the civil law. A bastard; the offspring of promiscuous cohabitation, otherwise called *vulgo quæsitus*, or *conceptus*; (Gr. ἀπάτωρ.) *Inst.* 1. 10. 12.

One born of an unlawful intercourse, (*ex nuptiis injustis*, or *ex damnato coitu.*) *Id.* *Bract.* fol. 63.

"**SQUARE,**" construed. *Anstr.* 44.

**SQUATTER.** In American law. One who settles on another's land, usually on new or wild land, without a title.

One who settles on public land without title or authority. See 1 *Hilliard's Real Prop.* 89, [53.]

**SS.** An abbreviation used in that part of a record, pleading, or affidavit, called the statement of the *venue*, or county in which it is made: as "City and county of New-York, ss." or more briefly in the English forms, "London, ss." Commonly translated or read, "to wit," and supposed to be a contraction of "*scilicet*," (q. v.) It has been otherwise explained to be a mark used to denote a separate section or paragraph in the record. 1 *Chitt. Pl.* 305, note (t.) 6th Am. ed. And this opinion is countenanced by the more ancient form of the contraction *ff*, or *ff*, the latter closely approximating the modern section mark §. Bracton, indeed, expressly uses *ff*, to denote the sections of the civil law. *Bract.* fol. 114.

**Stabit præsumptio donec probetur in con-**  
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**trarium.** A presumption shall stand, until proof be made to the contrary. *Win-gate's Max.* 712. *Hob.* 297. *Broom's Max.* 429, [731.]

Another form of this maxim is, *Stabitur præsumptioni donec probetur in contrarium.* A presumption will be stood by, or upheld until proof be made to the contrary. This is the form in which it is quoted by Bracton, Coke and Blackstone. *Bract.* fol. 6. *Co. Litt.* 373 b. 3 *Bl. Com.* 371. Still another form is *Standum erit præsumptioni, donec, &c.* *Bract.* fol. 19 b. See *Fleta*, lib. 3, c. 9, § 18.

**STABLE-STAND.** [L. Lat. *in stabili statione.*] In forest law. One of the four evidences or presumptions whereby a man was convicted of an intent to steal the king's deer in the forest. This was when a man was found at his *standing* in the forest with a cross-bow or long-bow bent, ready to shoot at any deer, or else standing close by a tree with grey-hounds in a leash, ready to slip. *Cowell.* *Manwood.*

**STABULARII.** Lat. [plur. of *stabularius*, q. v.] In the civil law. Stable-keepers; hostlers; (*qui stabulum exercent.*) *Dig.* 4. 9. 1. 5. *Story on Bailm.* § 464.

**STABULARIUS.** Lat. [from *stabulum*, a stable.] In the civil law. A stable-keeper. *Dig.* 4. 9. 4. 1. *Id.* 4. 9. 5.

**STACHIA.** L. Lat. In old records. A dam or head made to stop a water-course. *Cowell.*

**STAFF.** An abbreviation of Staffordshire. 1 *Instr. Cler.* 28.

**STAGNUM.** Lat. In the civil law. A pool. Defined by Ulpian, in the Digests, as that which contains water resting in it for a time, which water is collected for the most part in winter; (*quod temporalem contineat aquam ibidem stagnantem, quæ quidem aqua plerumque hieme cogitur.*) *Dig.* 43. 14. 1. 4.

**STAGNUM.** Lat. In old English law. A pool, or pond. *Co. Litt.* 5 a. This word included both the soil and the water. *Vaugh.* 108.

**STALLAGE.** [from Sax. *stal*, a station; L. Lat. *stallagium.*] In English law. The liberty or right of pitching or erecting stalls in fairs or markets. *Cowell.* *Spelman.*

A duty paid for the liberty of having stalls in a fair or market, or of removing them from one place to another. *Id.* 1 *Crabb's Real Prop.* 533, § 686. 6 *Ad. & Ell.* N. S. 31.

**STALLANGIATORES.** L. Lat. [from

*stallum*, a stall.] In old Scotch law. Foreign merchants, (Sc. "creamers or forraine merchandes,") who, in the time of fair or market, pay certain duty for their stall or stand, in which they sell their merchandize. *Skene de Verb. Signif.*

**STALLARIUS.** L. Lat. [from Sax. *stal*, a stall.] In Saxon law. A heretoch, or chief military leader. Supposed by Spelman to be of similar origin and import with the continental term *constabularius*. See *Constable of England*.

**STAMP.** In English law. An impression made upon paper or parchment, upon which many legal proceedings and private instruments are written, and for which a certain duty is required to be paid to the crown. See *Smith on Contracts*, 191, note (b.)

**STAMP ACTS.** In English law. Acts regulating the stamps upon deeds, contracts, agreements, papers in law proceedings, bills and notes, letters, receipts and other papers. The General Stamp Act now in force is the 55 Geo. III. c. 184. See *Smith on Contracts*, 191, note (b.) for a view of the present stamp law.

**STAMP DUTIES.** In English law. Duties imposed upon and raised from stamps upon parchment and paper; and forming a branch of the perpetual revenue of the kingdom. 1 *Bl. Com.* 323.

**STANCE.** In Scotch law. A resting place; a field or place adjoining a drove-road, for resting and refreshing sheep and cattle on their journey. 7 *Bell's Appeal Cases*, 53, 57, 58.

To **STAND.** [Lat. *stare*; L. Fr. *estre*.] To abide; to submit to; to meet a thing, instead of escaping from it. "To stand a trial," "to stand to the order of a court," are phrases still in use. In Scotch law, the same idea is expressed by the opposite figure of "underlie." To "underlie the law" in a certain court, is to abide by its sentence. 2 *Alis. Cr. Pr.* 337.

To have force or strength; to have strength in itself. An act is said "to stand good" against a party. To be good or effectual in law. "That all the words may stand is the first and true course." *Bacon's Arg. Case of Revocation of Uses; Works*, iv. 255.

To remain as a thing is; to remain in force. Pleadings demurred to and held good, are allowed to stand. "The prohibition must stand." 11 *Mod.* 286.

To appear in court. A party is said to

have a capacity of *standing* in judgment, (*standi in judicio*.) that is, of appearing in court and litigating there. 1 *Peters' R.* 578.

The radical ideas of this figurative term are those corresponding with its literal meaning, viz.: fixedness of position, inherent firmness or strength, capacity of maintaining an upright position. But these appear more clearly in the application of the Latin equivalent *stare*, (q. v.) See *Rectus in curia*.

**STANDARD OF WEIGHT or MEASURE.** A weight or measure fixed and prescribed by law, to which all other weights and measures are required to correspond. See 1 *Bl. Com.* 274—276.

**STANNARY COURTS.** In English law. Courts held for the *stannaries*, or tin mines (from Lat. *stannum*, tin,) in Devonshire and Cornwall, for the administration of justice among the tanners therein. 3 *Bl. Com.* 80. 3 *Steph. Com.* 448.

**STAPLE.** [L. Lat. *stapula*, q. v.] In English law. A mart or market. A place where the buying and selling of wool, lead, leather and other articles, were put under certain terms. 2 *Reeves' Hist. Eng. Law*, 393.

**STAPULA.** L. Lat. [from Germ. *stapel* or *staffel*, a step or heap.] In European law. Staple; market. *Loccen. de Jur. Mar.* lib. 1, c. 10.

**STAR, Starr.** [L. Lat. *starrum*.] In old English law. A contraction of the Hebrew *shetar*, (שֵׁטָר,) signifying a deed or contract; or rather, a misapprehension of the Jewish pronunciation (*shtar* or *shtor*) of the word. All the deeds, obligations and releases of the Jews in England, were anciently called *stars*, (*starra*,) and were written for the most part in Hebrew alone, or in Hebrew and Latin, the Hebrew being on the one side or top of the parchment, and the Latin on the other side, or bottom, after the Hebrew. *Blount. Cowell. Molloy de Jur. Mar.* 466. In the second edition of *Blount*, A. D. 1691, it is said that one of these *stars* yet remains in the treasury of the exchequer, written without points in King John's reign, the substance of which is thus expressed in Latin just under it, like an English condition under a Latin obligation. *Istud star fecit Hagius filius Magri de London, Domino Adæ de Stratonæ, de acquietancia de Stanmore, de omnibus debitis in quibus Dominus S. de Cheyndut ei*

*tenebatur. Ita quod idem Judæus nec hæredes sui nihil exigere possint de prædicto Ade, nec de hæredibus suis, ratione terræ de Stanmore de prædictis debitis.* Which may be translated thus: "This *star* made [was made by] Hagius the son of Mager, of London, to the Lord Adam de Stratton for an acquittance of Stanmore, of all the debts in which the Lord S. de Cheyndut was bound to him. So that neither the said Jew nor his heirs can demand any thing of the said Adam or his heirs, on account of the land of Stanmore for the aforesaid debts." Reference is made both by Cowell and Blount, to the Plea Rolls, *Pasch. 9 Edw. I. Rot. 4, 5, 6*, where many *stars*, as well of grant and release, as obligatory and by way of mortgage, are pleaded and recited at large. In Selden's *Titles of Honour*, (p. 798, *et seq.*) there is a copy of a Hebrew *shetar*, taken from the records of the exchequer. By an ordinance of Richard I. preserved by Hoveden, these Jewish *stars* were commanded to be enrolled and deposited in chests under three keys, in certain places; one, and the most considerable of which, was in the king's exchequer at Westminster. *4 Bl. Com. 266*, note. See *Arca chirographica Judæorum*.

STAR-CHAMBER. [L. Lat. *camera stellata*; L. Fr. *chaumbre des esteilles*.] The name of a celebrated court in England, abolished in the reign of Charles I. See *Court of Star-Chamber*.

\* \* This court is said to have been so called either from the Sax. *steoran*, to steer or govern;—or from its punishing the *crimen stellionatus*, or cosenage;—or because the room wherein it sat, the old council chamber of the palace of Westminster, was full of *windows*;—or because *haply* the roof or ceiling was at the first garnished with gilded *stars*; the latter being the opinion of Lord Coke. *4 Inst. 66*. All these are very reasonably pronounced by Sir W. Blackstone to be merely conjectures, *no stars* being visible in the roof of the apartment in his day, nor are any said to have remained there so late as the reign of Queen Elizabeth. *4 Bl. Com. 266*, note. The learned commentator's own opinion, as very clearly explained by him, is that the *star-chamber* was so called from being held in that room at the exchequer where the chests containing those Jewish contracts and obligations called *stars*, (from the Hebrew *shetar*, pro-

nounced *shtar*,) were kept. That the principal repository of these *stars* was in the king's Exchequer at Westminster, is clearly shown by an ordinance of Richard I. preserved by Hoveden; and the first time the *star-chamber* is mentioned in any record, it is expressly said to have been situated near the receipt of the exchequer at Westminster. *Rot. Claus. 41 Edw. III. m. 13*. It may be added, in confirmation of this opinion, that the old technical title of the Rolls Office of the Chancery, (*Domus Conversorum*,) originated in a very similar way, it being held in a *house* built by King Henry III. for Jews converted to the Christian faith, but which, on the expulsion of the Jews by Edward III. was assigned as a place for the custody of the rolls and records of the chancery. *Cowell, voc. Rolls*. The law Latin and law French titles of this court are of no value in an etymological point of view, as they seem to have become established at a comparatively modern date, when the true meaning of *starr* or *star* was forgotten.

STARE. Lat. In old English law. To stand; to be good or valid in law; the opposite of *cadere*, to fall or fail. *Aut stabit appellum aut cadet*; the appeal will either stand or fall. *Bract. fol. 140 b*. See *Cadere*. *Contractus stare non poterit*; the contract cannot stand. *Id. fol. 62*.

To meet; to abide. *Ad standum recto*; to stand to an accusation; to appear and answer it. *Bract. fol. 125, 154*. Sometimes translated *to stand to the right*; and otherwise expressed *stare juri*. *Reg. Orig. 250 b*. *Right*, however, in this instance, seems to be merely an Anglicized form of the L. Lat. *rectum*, an accusation. See *Rectum, Rettum*.

To appear in court; to be a party to an action or other judicial proceeding. See *Persona standi in judicio*.

To stop or stay. See *Stet processus*.

To stand; to accept an office to which one has been appointed. *Stare recusare*; to refuse to stand. *3 M. & S. 184*.

STARE DECISIS. Lat. To stand by decided cases; to uphold precedents; to maintain former adjudications. *1 Kent's Com. 477*. "It is better *stare decisis*. The very case has already been determined." *Grose, J. 13 East, 320*. A part of an old verse, expressed at length,

*Stare decisis, et non quæta movere.*

To stand by precedents, and not to disturb settled points.

In a recent case in the New-York Court of Appeals, it was held that the judicial rule, *stare decisis*, should have great force with this court in reference to adjudications on questions of law made by it, after full discussion and examination. Accordingly, where, on a second appeal, the question presented was identical with that on which the cause was previously decided by the court, it was held that the court would not reconsider and depart from its former adjudication, although its members were not unanimous in making that decision, and the reasoning of those who concurred was not in harmony. 3 *Kernan's R.* 500. But see 6 *Ohio St. R.* 78.

STATE. [Lat. *status*.] Condition. See *Status*.

STATE. [Lat. *respublica*.] In public law. A complete or self-sufficient body of persons, united together in one community for the defence of their rights, and to do right to foreigners. 1 *Kent's Com.* 189, note.—A political body, or body politic; the whole body of people united under one government. *Webster*. A government.

STATE. O. Eng. Estate; an estate. A word frequently used by Lord Bacon. *Works*, vol. iv. *passim*.

To STATE. To express the particulars of a thing in writing or in words; to set down or set forth in detail; to relate at length, or in full. As, to *state* an account, to *state* a case.

To set down in gross; to mention in general terms, or by way of reference; to refer. This was held to be the sense of the word, in a case in the Supreme Court of New-York. 6 *Hill's R.* 300.

STATED. Settled; closed. An account *stated* means an account settled, and at an end. *Pulling on Merc. Accounts*, 33. "In order to constitute an account *stated*, there must be a statement of some certain amount of money being due, which must be made either to the party himself, or to some agent of his." Parke, B. 5 *Mees. & W.* 667.

STATIM. Lat. [Fr. *maintenant*.] In old English law. Immediately. This word was not always literally understood, or rather, it was understood not so much of *actual* time, as of *effectual* and *lawful* time; that is, of a time which permitted all the legal adjuncts and accompaniments of an act to be completed. See *Bacon's Argument in the Case of Revocation of Uses*; *Works*, iv. 253, 254.

STATULIBER. Lat. In the Roman law. One who is made free by will under a condition; one who has his liberty fixed and appointed at a certain time or on a certain condition, (*qui statutam et destinatam in tempus vel conditionem libertatem habet*.) *Dig.* 40. 7.

STATUS. Lat. [from *stare*, to stand.] In the civil law. Standing; state; condition. *Dig.* 1. 5. The condition of a person as being either freeman or slave. *Dig.* 1. 5. 3. A certain civil qualification, otherwise called *caput*, (q. v.) a civil capacity for rights. 1 *Mack. Civ. Law*, 129, § 119. A quality by reason of which men enjoy a different right. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, § 76. See 2 *Kent's Com.* 457, note. The term is of frequent occurrence in Bracton and Fleta. *Bract.* fol. 190 b. *Fleta*, lib. 2, c. 51, § 1. *Id.* lib. 4, c. 11. And it is still currently used in modern law. See the Ohio case of *Anderson v. Poindexter*, 6 *Ohio St. R.* 622—727.

STATUS. Lat. In old English law. Estate. 1 *Mod.* 101. By a grant or release of "*totum statum suum*," the fee simple will pass. Hale, C. J. and Wylde, J. *Id. ibid.*

STATUTE. [L. Fr. *estatut*; L. Lat. *statutum*, from *statuere*, to establish.] An act of the legislature of a state, [declaring] commanding or prohibiting something. *Webster*.—An express act of the legislature of a country. 2 *Kent's Com.* 456. Literally, a thing established. Sometimes called, in the old books, an *establishment*, (q. v.) See 1 *Bl. Com.* 85. 1 *Steph. Com.* 66. A law made with all the formalities of legislation.\* Statute law is the express written will of the legislature, rendered authentic by certain prescribed forms and solemnities. 1 *Kent's Com.* 447.

STATUTE. In old English law. A bill or law which, after receiving the royal assent on the parliament roll, was entered on the *statute roll*, by which it became complete. A *statute* was thus distinguished from an *ordinance*, (q. v.) which became complete by the royal assent on the parliament roll, without further entry. *Hale's Hist. Com. Law*, 13, 14, note (C.) Runnington's ed. 1820. But this distinction was not always made, acts of parliament, or statutes, being frequently called ordinances, and ordinances as frequently styled acts of parliament or statutes. *Id. ibid.*

STATUTE. [Lat. *statutum*.] In foreign and civil law. Any particular municipal

law or usage, though resting for its authority on judicial decisions, or the practice of nations. 2 *Kent's Com.* 456.—The whole municipal law of a particular state, from whatever source arising. *Story's Confl. Laws*, § 12.

STATUTE. In English law. An abbreviation of statute staple. *Freem.* 44.

To STATUTE. In old Scotch law. To establish. "Decerns, statutes and ordains." 1 *How. St. Trials*, 1381.

STATUTE OF FRAUDS. See *Frauds, Statute of*.

STATUTE OF LIMITATIONS. A statute by which rights of action are limited to certain prescribed periods of time. A statute fixing and limiting certain periods of time, beyond which rights of action cannot be enforced.\* 3 *Bl. Com.* 306—308.

STATUTE-MERCHANT. In English law. A security for a debt acknowledged to be due, entered into before the chief magistrate of some trading town, pursuant to the statute 13 Edw. I. *De Mercatoribus*, by which not only the body of the debtor might be imprisoned, and his goods seized in satisfaction of the debt, but also his lands might be delivered to the creditor till out of the rents and profits of them the debt be satisfied. 2 *Bl. Com.* 160. Now fallen into disuse. 1 *Steph. Com.* 287.

STATUTE ROLL. In English law. A roll upon which an act, after receiving the royal assent, was formally entered. *Hale's Hist. Com. Law*, 13, (Runnington's ed. 1820.) See 1 *Bl. Com.* 182. "The first Statute Roll we have," says Lord Hale, "is in the Tower; it begins with Magna Charta, and ends with Edward III. and is called *Magnus Rotulus Statutor*." *Hist. Com. Law*, 16, 17.

STATUTE-STAPLE. In English law. A security for a debt acknowledged to be due, so called from its being entered into before the mayor of the *staple*, that is to say, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns. In other respects it resembled the *statute-merchant*, (q. v.) but like that has now fallen into disuse. 2 *Bl. Com.* 160. 1 *Steph. Com.* 287.

STATUTUM. Lat. [from *statuere*, to determine.] In the civil law. Established; determined. A term applied to judicial action. *Dig.* 50. 16. 46, pr.

STATUTUM. Lat. [from *statuere*, to

establish.] In old English law. A statute; an act of parliament. *Fleta*, lib. 2, c. 47, § 10. *Ex statuto Magnæ Cartæ*; according to the statute of Magna Charta. *Id.* lib. 5, c. 11, § 1. *Statutum affirmativum non derogat communi legi*. An affirmative statute does not derogate from the common law. *Jenk. Cent.* 24.

*Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis*. When the words of a statute are special, but the reason of it general, the statute is to be understood generally. 10 *Co.* 101.

STATUTUM WALLIÆ. Lat. The Statute of Wales. The title of a statute passed in the 12th year of Edw. I. being a sort of constitution for the principality of Wales, which was thereby, in a great measure, put on the foot of England, with respect to its laws and the administration of justice. 2 *Reeves' Hist.* 93, 94. For a view of its provisions, see *Id.* 95—99.

STEURUM, *Staurus*. L. Lat. In old records. A store, or stock of cattle. *Dyer*, 110. A term of common occurrence in the accounts of monastic establishments. *Spelman. Cowell*.

STAY. In practice. A stopping; the act of stopping or arresting a judicial proceeding, by the order of a court or judge. Orders for a *stay* of proceedings are frequent in practice.

To STAY. In practice. To stop; to arrest by a judicial order. "Let it *stay*; and judgment was *stayed*." 12 *Mod.* 269.

STEALTH. Theft is so called by Finch. "Stealth is the wrongful taking of goods without pretence of title." *Law*, b. 3, ch. 17.

STEELBOW GOODS. In Scotch law. Corns, cattle, straw and implements of husbandry delivered by a landlord to his tenant, by which the tenant is enabled to stock and labour the farm; in consideration of which he becomes bound to return articles equal in quantity and quality, at the expiry of the lease. *Bell's Dict.*

STEEL-YARD, *Stillyard, Stilyard*. [L. Lat. *Guildhalda Teutonicorum*.] In old English law. A place or house in London, where the fraternity of the *Easterling merchants*, otherwise called *The merchants of the Hanse and Almaine*, had their abode. It was at first so denominated from a broad place or court where *steel* was sold, upon which that house was founded. *Cowell*. The *Stilyard Company* was a body of

merchants created in the year 1215 under Henry IV. in favor of the free cities of Germany which had been assistant to him in his wars against France. It took its name from the place where they lived, which was a *yard* near London Bridge where *steel* was sold. *Dyer*, 92 b, note. In the modern books, the *merchants of the Steel-Yard* are said to be a company to whom the *steel-yard* (meaning the balance for weighing goods) was assigned by Henry III. *Brande*.

STELLIONATE. [from Lat. *stellionatus*, q. v.] In Scotch law. The crime of aliening the same subject to different persons. 2 *Kames' Equity*, 40. *Bell's Dict*.

STELLIONATUS. Lat. [from *stellio*, a lizard.] In the civil law. A general term used to denote all kinds of fraud and imposition which were not designated by any more special appellation. *Dig.* 47. 20. The mortgaging or selling another's property as one's own, or the mortgaging one's property a second time without notice of the first mortgage, were acts of *stellionatus*, or *stellionate*, as it is rendered in Scotch law.

ΣΤΕΜΜΑΤΑ, Στέμματα. Gr. In the civil law. Tables of genealogy. *Dig.* 38. 10. 9.

STERBRECH, *Strebrech*. Sax. [from *stre*, a way, and *brech*, a breaking.] In old English law. The offence of breaking up, obstructing, or narrowing a way or road. *LL. Hen. I. c. 81. Spelman*.

"STERILITY," *ex vi termini*, imports an ungrateful soil; a sort of natural and constitutional infecundity, resisting the ordinary means properly applied to render it otherwise. Lord Ellenborough, 2 *M. & S.* 359.

STERLING. [L. Lat. *sterlingus*, *sterlingum*.] In English law. Current or standard coin, especially silver coin; a standard of coinage. Anciently written *esterling*, (q. v.)

In old English law. A penny. *Fleta*, lib. 2, c. 12, § 11. See *Esterling*.

STET PROCESSUS. L. Lat. (Let the process stay or stand; let the proceedings be stayed.) In practice. An entry on the record, of a nature similar to a *nolle prosequi*, by which a plaintiff agrees that all further proceedings in the action shall be stayed. In English practice, this entry is usually made, where the defendant becomes insolvent pending the action, and the object of it is to prevent him from ob-

taining judgment as in case of a nonsuit. 1 *Tidd's Pr.* 682, 683.

STETH, *Stede*. In old English law. The bank of a river. *Co. Litt.* 4 b.

STEURA. L. Lat. In old European law. A tribute; an exaction or tax. *Spelman*.

STICH. (plur. *Stiches*.) In English law. A furrow or ridge of land. 2 *Taunt.* 38, 39. See *Id.* note (a.)

To STICK. In the old books. To stop; to hesitate; to decline to accede; to accede with reluctance. "The court *stuck* a little at this exception." 2 *Show.* 491. "The law has always *stuck* at new niceties that have been started." North, C. J. 1 *Mod.* 251. "This was what *stuck* with the court." 6 *Mod.* 26.

STILLICIDIUM. Lat. [from *stilla*, a drop, and *cadere*, to fall.] In the civil law. Drip; the dripping of water from the eaves of a house. *Inst.* 2. 3. 1. 4. *Dig.* 8. 2. 2. *Id.* 8. 2. 20, 21. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 3, § 404. A species of predial servitude. See *Servitus*.

STINGISDINT. O. Sc. [Lat. *fastigatio*.] In old Scotch law. A dint or stroke with a *sting* or baton. *Leg. Burg. c. sciendum est*, 9. *Skene de Verb. Sign.*

STINT. In English law. Limit; a limited number. Used as descriptive of a species of common. See *Common sans nombre*.

STIPENDIUM. Lat. In the civil law. The pay of a soldier; wages; stipend. *Calv. Lex*.

Tribute. Said in the Digests to be derived from *stipes*, a small coin of brass, because collected in small sums, (*quod per stipes, id est, modica æra colligatur.*) *Dig.* 50. 16. 27. It has been, however, otherwise derived from *stipis*, and *pendere*, to weigh, soldiers anciently receiving their pay by weight, and not by tale.

STIPES. Lat. In old English law. Stock; a stock; a source of descent or title. Literally, the trunk of a tree. *Communis stipes*; the common stock. *Fleta*, lib. 6, c. 2. "The *stipes* from whom the heir is to deduce his pedigree." *Blackst. Law Tr.* 27. *Seisina facit stipitem*, (q. v.) *Seisin* makes stock.

STIPULA. Lat. In old English records. Straw; stubble left standing on the ground after the grain is reaped and carried away. *Cowell*.

STIPULARI. Lat. In the civil law. In a strict sense, to ask or demand some-

thing to be done or given to one, in a certain form of words, which, when responded to by another party in a similar form, constituted a contract between them. Thus, one party said or asked, "*Spondes?*" (Do you engage?) The other said or answered, "*Spondeo.*" (I do engage.) The party who asked was said to *stipulate* (*stipulari*;) the party who answered was said to *promise*, (*promittere*.) See *Inst.* 3. 16. 1. *Id.* 3. 17, pr. See *Stipulatio*.

In a more general sense,—to promise or engage. In this sense, it was used to denote the act of the party who answered the interrogation, as well as that of him who asked it. *Stipulari est promittere.* *Isid.* lib. 5, Etymol. c. 24. *Calv. Lex.*

**STIPULATIO.** Lat. In the civil law. A contract in a solemn form of words, consisting of an interrogation and a reply; as "*Spondes? Spondeo.*" (Do you undertake? I do undertake.) "*Quinque aureos dare spondes? Spondeo.*" (Do you engage to give me five aurei? I do.) *Inst.* 3. 6. 1. See *Dig.* 45. 1. By this kind of form the party answering the question was bound to give or do the thing that was asked. *Calv. Lex.* *Hallifax, Anal.* b. 2, c. 16, num. 2. See *Fleta*, lib. 2, c. 56, § 9.

This word is said in the Institutes to be so called, because what was firm or strong was called by the ancient Romans *stipulum*, derived, perhaps, from *stipes*, the trunk of a tree. *Inst.* 3. 16, pr.

**STIPULATION.** [from Lat. *stipulatio*, q. v.] In practice. An engagement or undertaking in writing, to do a certain act; as to try a cause at a certain time. 1 *Burr. Pr.* 389.

In admiralty practice. An undertaking in the nature of bail, entered into on the arrest of a defendant, or the seizure of property. 3 *Bl. Com.* 108, 291. *Benedict's Adm. Pr.* 270—277.

**STIPULATOR.** Lat. In the civil law. The party who asked the question in the contract of stipulation; the party to whom the promise was made; the other party, or he who answered, being called the *promissor*. *Calv. Lex.* See *Stipulatio*.

In a more general sense, the term was applied to both parties. *Calv. Lex.*

**STIRPS.** Lat. In the civil law. A stock; a source of descent. Literally, the root, stem or stock of a tree or plant. A parent or ancestor was said to be the *stirps*, root or stock of his children, or descend-

ants. See *Nov.* 118, c. 1. The term has been transferred to the common law. 2 *Bl. Com.* 204.

*Stirpes*, (plur. of *stirps*;) stocks; roots; sources of descent. *Nov.* 118, c. 1. See *In stirpes*, *Per stirpes*.

**STOCK.** [Lat. *stirps*, *stirpes*.] A source or root of succession, or descent.\* 1 *Steph. Com.* 379.

**STOCK.** In mercantile law. The goods and wares of a merchant or tradesman, kept for sale and traffic.

In a larger sense, the capital of a merchant or other person, including his merchandise, money and credits, or, in other words, the entire property employed in business. See *Keep v. Sanderson*, 2 *Wisconsin R.* 42, 56, 57.

"**STOCK**," (government stock,) held not to come within the denomination of "money out at interest." 6 *East*, 182.

**STOCKS.** [L. Lat. *cippi*; L. Fr. *ceps*.] A machine constructed of wood, with holes through which the feet of offenders were passed, and their persons thus confined. Now almost disused, even in England. *Brande*.

**STOPPAGE IN TRANSITU.** Lat. and Eng. Stoppage on the transit or passage; the stoppage of goods sold on their *transitus*, passage or way, to the buyer.\* The right which a vendor, when he sells goods on credit to another, has of resuming the possession of the goods, while they are in the hands of a carrier or middle man, in their transit to the consignee or vendee, and before they arrive into his actual possession, or to the destination which he has appointed for them, on his becoming bankrupt or insolvent. 2 *Ken's Com.* 540. See 2 *Steph. Com.* 122. 2 *Smith's Lead. Cas.* 431. *Russell on Factors*, 218. *Smith on Contracts*, 339. *Blackburn on Contr. of Sale*, 201.

**ΣΤΟΡΗ, Στορη.** Gr. The natural affection of a parent. 1 *Bl. Com.* 447.

**STOURNY.** [Ital. *storno*.] In European law. A contraction of the word *ristourne*, (dissolution of a contract of insurance.) A Provencal Italian word. *Emerig. Tr. des Ass.* ch. 16, pr.

**STOUTHRIEF.** Sc. In Scotch law. Robbery. *Bell's Dict.* A violent taking. 2 *Brown's R.* 146.

**STOWE.** In old English law. A valley. *Co. Litt.* 4 b.

**STRAND.** [Sax. *strond*.] A shore or bank of the sea or a river. *Cowell*.

**STRANDING.** [Fr. *echouement*.] In insurance and maritime law. An accidental striking and remaining of a vessel on the ground or strand, by which she is injured; a grounding and filling with water; the running or drifting of a vessel on shore.\* See 3 *Kent's Com.* 323, note.

*Stranding* is when a ship, by accident, is on the ground or *strand*, and is injured thereby. 7 *B. & C.* 219. A *stranding*, in the sense of a policy, is when a ship takes ground, not in the ordinary course of navigation, but by accident, or the force of wind or the sea, and remains stationary for some time. The vessel must ground from an accident happening out of the ordinary and usual course of navigation. She must be on the *strand* under extraordinary circumstances, or from extraneous causes. 3 *B. & Ad.* 20. Where a vessel in a tide harbor, takes the ground in the ordinary way, upon the ebbing of the tide, it is not a *stranding* within the policy, although, in common language the vessel is on the strand. But to constitute "stranding," she must be on the strand under extraordinary circumstances, or from extraneous causes. Story, J. 2 *Sumner's R.* 203. And see 13 *Ohio R.* 48. In the last case it was decided that where a loss is occasioned by the vessel striking upon a rock and bilging, without remaining stationary, it was not a loss by *stranding*.

**STRANGER.** One who is not a party or privy to an act or contract. *Cowell*.

**STRATA.** L. Lat. In old English law. A street, or road. *Strata regalis*; the king's highway. *Fleta*, lib. 2, c. 49, § 11. *Stratæ publicæ*; public streets. *Bract.* fol. 170 b.

Properly, a paved way; but not used in that sense. 10 *Mod.* 382.

**STRAY.** See *Estray*.

**STREAM.** A current of water; a body of flowing water. The word, in its ordinary sense, includes rivers. But *Callis* defines a stream "a current of waters running over the level at random, and not kept in with banks or walls." *Callis on Sewers*, [83,] 133. See *Angell on Water-Courses*, §§ 2, 4, 8, and note.

**STREIGHTEN.** In the old books. To narrow or restrict. "The *habendum* should not *streighten* the devise." 1 *Leon.* 58.

**STREPITUS.** Lat. Noise; confusion. The noise and confusion of a judicial tribunal, (*strepitus judicialis*;) the noise of a court. *Sine strepitu*; without noise, in a

quiet way. Lord Mansfield, C. J. 1 *W. Bl.* 82.

**STREPITUS.** L. Lat. In old records. Estrepement or strip; a species of waste or destruction of property. *Spelman*.

**STRICT SETTLEMENT.** In English law. A settlement of an estate upon a parent for life, with remainder to his first and other sons successively in tail, including the appointment of trustees to preserve contingent remainders. See *Atherley on Marr. Settlements*, 93.

**STRICTI JURIS.** Lat. Of strict right or law; according to strict law; without equitable interpretation, or enlargement of application. "A license is a thing *stricti juris*; a privilege which a man does not possess by his own right, but it is conceded to him as an indulgence; and therefore it is to be strictly observed." Sir William Scott, (The *Juno*,) 2 *Rob. Adm. R.* 117. A formal precise action said to be *stricti juris*. 1 *W. Bl.* 388. See *Actio stricti juris*. An objection said to be *stricti juris*. 1 *East*, 17. *Anstr.* 152. Priority among creditors is *stricti juris*. *Id.* 166. Maritime liens are *stricti juris*, and cannot be extended by construction. 19 *Howard's R.* 82.

**STRICTISSIMI JURIS.** Lat. Of the strictest right or law; to be interpreted and applied in the strictest manner.\* "Licenses being matter of special indulgence, the application of them was formerly *strictissimi juris*." Sir William Scott, The *Goede Hoop*, 1 *Edw. Adm. R.* 328. "A ground that is not entitled to any favor, and stands upon the very limits *strictissimi juris*." Story, J. 3 *Story's R.* 159. "This is a case *strictissimi juris*, therefore we will not assist it." 1 *W. Bl.* 642. See 6 *East*, 144. 2 *H. Bl.* 413.

**STRICTO JURE.** Lat. In strict law. 1 *Kent's Com.* 65.

**STRICTUM JUS.** Lat. Strict right or law; the rigor of the law, as distinguished from equity. See *Stricti juris*, *Strictissimi juris*.

**STRIKING A DOCKET.** In English practice. The first step in the proceedings in bankruptcy, which consists in making affidavit of the debt, and giving a bond to follow up the proceedings with effect. 2 *Steph. Com.* 199. When the affidavit and bond are delivered at the bankrupt office, an entry is made in what is called the *docket-book*; upon which the petitioning creditor is said to have *struck a docket*. *Eden's Bankrupt Law*, 51, 52.

**STRIKING A JURY.** In practice. The peculiar mode of constituting a special jury which has been ordered by the court for the trial of some particular cause, viz. by each party *striking out* a certain number of names from a list of jurors prepared by the clerk or master of the court, so as to reduce it to the number of persons prescribed by law, who are to be summoned and returned as jurors by the sheriff.

The striking of the jury is done before the clerk out of court. The original practice in England was for the master to name forty-eight freeholders, and then each party *struck out* twelve, by one at a time, (the plaintiff, or his attorney, beginning first;) the twenty-four names remaining constituted the jury who were to be returned for the trial of the cause. 2 *Tidd's Pr.* 787, 788. The practice has been of late years somewhat modified, but it has been essentially adopted in the state of New-York. 2 *Rev. St.* [418,] 338, §§ 48, 49.

**STROND.** Sax. In old records. A shore or bank of a sea or river; a strand. *Over strond & streme, on wode & felde*; on shore and stream, in wood and field. *Cart. Ric. I.* cited in *Cowell*.

**STRUCK JURY.** In practice. A special jury. So called because constituted by *striking out* a certain number of names from a prepared list. See *Striking a jury*.

**STRUES.** Lat. In old pleading. A rick (of hay.) 1 *Mod.* 289.

**STUBULA.** Lat. In old English law. Stubble; straw. *Fleta*, lib. 2, c. 73, § 9.

To **STULTIFY**. [from Lat. *stultus*, foolish, and *fieri*, to be made.] To make out one to be of unsound mind. It is a maxim in the law of England, in regard to transactions merely voidable, that **No man shall be allowed to stultify himself**, that is, to plead his own unsoundness of mind in a court of justice. 1 *Steph. Com.* 441. Mr. Stephen thus qualifies this maxim, which is stated by Blackstone in broader terms, without reference to the distinction between void and voidable transactions. *Id. ibid.* note. 2 *Bl. Com.* 291, 292. The maxim itself has been pronounced absurd, unjust and mischievous, by the highest American authority. 1 *Story's Eq. Jur.* § 225, and notes. 2 *Kent's Com.* 451. Mr. Justice Story observes that, in America, it has not been of universal adoption in the state courts, if, indeed, it has ever been recognised as binding in any of the courts of common law. 1 *Story's Eq. Jur. ub. sup.*

Chancellor Kent and Professor Greenleaf pronounce it to be "exploded." 2 *Kent's Com. ub. sup.* 2 *Greenl. Ev.* § 369.

**STULTILOQUIUM.** L. Lat. [from *stultus*, foolish, and *loqui*, to speak.] In old English law. Vicious or disorderly pleading, for which a fine was imposed by King John, supposed to be the origin of the fines for *beau-pleader*, (q. v.) *Crabb's Hist.* 135.

**STUPPARE.** Lat. In old European law. To stop; to close a wound. *L. Alaman. tit. 59. Spelman.*

**STUPRUM.** Lat. In the civil law. Unlawful intercourse with a woman. Distinguished from adultery (*adulterium*) as being committed with a virgin or widow. *Dig.* 48. 5. 6. 1. But the terms were often used indifferently. *Id. ibid.* See *Id.* 50. 16. 101, pr.

**SUAPTE NATURA.** Lat. In its own nature. *Suapte naturâ sterilis*; barren in its own nature and quality; intrinsically barren. Lord Ellenborough, 5 *M. & S.* 170.

**SUB.** Lat. [L. Fr. *soub*, south.] Under; upon. See *infra*.

**SUB CONDITIO.** L. Lat. In old conveyancing. Upon condition; literally, under condition. One of the words which, by virtue of themselves, make estates upon condition. *Litt. sect.* 328. The most express and proper [words of] condition in deeds. *Co. Litt.* 203 a. 10 *Co.* 42 a.

**SUB DISJUNCTIONE.** Lat. In the alternative. *Fleta*, lib. 2, c. 60, § 21.

**SUB JUDICE.** Lat. Under or before a judge or court; under judicial consideration; undetermined. 12 *East*, 409.

**SUB MODO.** L. Lat. Under, or subject to a qualification; in a qualified manner, or sense. *Fieri autem poterit donatio sub conditione, seu sub modo*; a gift may be made subject to a condition, or subject to a qualification. *Bract.* fol. 19. "Not absolutely, but *sub modo*." 2 *Mod.* 280.

**SUB PEDE SIGILLI.** Lat. Under the foot of the seal; under seal. 1 *Stra.* 521.

**SUB POTESTATE.** Lat. Under power; subject to the power of another; as a slave or a child. *Bract.* fol. 24.

**SUB SALVO ET SECURO CONDUCTU.** L. Lat. Under safe and secure conduct. 1 *Stra.* 430. Words in the old writ of *habeas corpus*. *Id. ibid.*

**SUB SIGILLO.** Lat. Under seal. 1 *Stra.* 674.

**SUB SILENTIO.** Lat. Under silence; in silence; without notice taken. 1 *Bl.*

*Com.* 183. Precedents *sub silentio*. 1 *P. Wms.* 223. *Hardr.* 98, arg.

SUB SPE RECONCILIATIONIS. L. Lat. Under the hope of reconciliation. 2 *Kent's Com.* 127.

SUB SUO PERICULO. L. Lat. At his own risk. *Fleta*, lib. 2, c. 5, § 5.

SUB-AGENT. An under agent; a substituted agent; an agent appointed by one who is himself an agent. 2 *Kent's Com.* 633.

SUB-BALLIVUS. L. Lat. In old English law. An under-bailiff; a sheriff's deputy. *Fleta*, lib. 2, c. 68, § 2.

SUB-BOSCUS. L. Lat. [L. Fr. *sub-bois*.] In old English law. Underwood, or coppice. *Fleta*, lib. 1, c. 24, § 8. *Shep. Touch.* 10. 3 *Leon.* 9, case 73.

SUB-CONTRACT. A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a stranger. *Heath, J.* 1 *H. Bl.* 37, 45.

SUB-DELEGARE. L. Lat. In old English law. To sub-delegate; to appoint a delegate of a delegate; to delegate power already delegated. Applied to the act of a judge, (himself acting by delegation,) in delegating or assigning another to act in his place. *Nullus justitarius à domino rege sic delegatus, poterit aliquem sibi sub-delegare*; no justice so delegated by the king can sub-delegate any to himself. *Bract.* fol. 108 b. See *Id.* fol. 405 b. *Nullus sub-delegatus alium potest sibi sub-delegare, ut recordum possit præsentare*; no sub-delegated [justice] can sub-delegate another to himself, so as to be able to present a record. *Fleta*, lib. 1, c. 17, § 31.

SUBDITUS. Lat. In old English law. A vassal; a dependent; any one under the power of another. *Spelman.* *Homo vel subditus.* *Bract.* fol. 412.

A subject. *Hale's Anal.* sect. xiii.

SUBHASTARE. Lat. [from *sub*, under, and *hasta*, a spear.] In the civil law. To sell at public auction, which was done *sub hasta*, under a spear; to put or sell under the spear. *Calv. Lex.* See *Subhastatio*.

SUBHASTATIO. Lat. [from *subhastare*, q. v.] In the civil law. A sale by public auction, which was done under a spear, fixed up at the place of sale as a public sign of it. *Calv. Lex.* *Festus*.

The Roman custom of setting up a spear at an auction, seems to have been derived from the circumstance that at first only

those things which were taken in war were sold in that manner. *Adam's Rom. Ant.* 59. The use of a spear continued to be retained in the middle ages, the Roman terms *subhastatio*, and *subhastator*, being also retained. *Babington on Auctions*, 2, 3. In modern auctions, a staff with a flag has taken its place.

SUBINFEUDATION. [from Lat. *sub*, under, and *in*, in, and *feudum*, a fief.] In feudal law. The granting of a feud or fief out of another, to be held by an under tenant.\* A term applied to the practice or system introduced by the inferior lords who held of the king's greater barons in England, of carving out portions of their own fees or estates, (called in feudal law *arriere fiefs*), and granting them to others, to be held as of themselves. 2 *Bl. Com.* 91. 1 *Spence's Chancery*, 138. 3 *Kent's Com.* 497. See *Bell's Dict.*

SUBJACERE. L. Lat. In old English law. To be subject to. Literally, to lie under. *Subjacere debet juri ubi deliquerit*; he ought to be subject to the law [of the place] where he has offended. *Fleta*, lib. 6, c. 37, § 2. See *Underlie*.

SUBJECT. [from Lat. *subjectus*, from *subjicere*, to put under; Lat. *subditus*.] In public law. One who is under the protection and power of a government and laws; one who owes allegiance to a government.\* "A person domiciled in a country, and enjoying the protection of its sovereign, is deemed a subject of that country." *Story, J.* 2 *Wheaton's R.* 227, 245, 246.

In a stricter sense, this term is usually applied to those who live under, or owe allegiance to a monarchy, as distinguished from a republic, the members of which are termed *citizens*. But it has been observed by high American authority, that "though the term *citizen* seems to be appropriate to republican freemen, yet we are, equally with the inhabitants of all other countries, *subjects*, for we are equally bound by allegiance and subjection to the government and law of the land." 2 *Kent's Com.* 258, note. The term *subjects*, indeed, has been held by the same authority to be the proper appellation of blacks born within and under the allegiance of the United States. *Id. ibid.*

Sublata veneratione magistratum, respublica ruit. When respect for magistrates is taken away, the commonwealth falls. *Jenk. Cent.* 43, case 81. Applied to the offence of striking in court. *Id. ibid.*

**Sublato fundamento, cadit opus.** When the foundation is removed, the work falls. *Jenk. Cent.* 106, case 2.

**Sublato principali, tollitur adjunctum.** When the principal is taken away, the incident is taken also. *Cc. Litt.* 389 a.

**SUBMISSION.** An agreement by which parties consent to submit their differences to the decision of an arbitrator. Usually formally made in writing, and by bond, but neither of these forms is indispensably necessary to constitute it. See *Russell's Arbitrator*, 2, 49. *Billings on Awards*, 9.

**SUBORN.** [Lat. *subornare*, from *sub*, under, and *ornare*, to prepare.] In criminal law. To procure another to commit perjury. *Steph. Crim. Law*, 74. Literally, to *instruct* one privily, or in an underhanded manner, what to say; to prepare secretly, or underhand. To procure unlawfully. *Say*, 292. *Subornare est quasi subtus in aure ipsius male ornare*; to suborn is to instruct one privily, as by whispering in his ear, with a bad design. 3 *Inst.* 167.

**SUBORNATION.** [Lat. *subornatio*, from *subornare*, q. v.] In criminal law. The offence of procuring another to commit perjury. *Steph. Crim. Law*, 74. Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal. 4 *Bl. Com.* 137. To render the offence of subornation of perjury complete either at common law, or under the statute, the false oath must be actually taken. 3 *Mod.* 122. 1 *Leach*, 455, notes. 2 *Russell on Crimes*, 596, (Am. ed. 1850.)

**SUBPŒNA, (or SUB PŒNA.)** Lat. Under a penalty. In practice. A writ commanding the attendance or appearance of a witness or party in court, or before a judicial officer, *under a penalty (sub pœna)* in case of disobedience. So termed from the emphatic words of the Latin forms. See *infra*.

**SUBPŒNA.** In equity practice. The process by which a defendant is commanded to appear and answer the plaintiff's bill. 3 *Bl. Com.* 443. 1 *Daniell's Ch. Pr.* 495.

**SUBPŒNA AD TESTIFICANDUM.** L. Lat. Subpœna to testify. The common *subpœna* requiring the attendance of a witness, on a trial, inquisition or examination. 3 *Bl. Com.* 369. 1 *Arch. Pr.* 170. 2 *Id.* 37.

**SUBPŒNA DUCES TECUM.** L.

Lat. In practice. That kind of *subpœna* by which a witness is commanded to *bring with him* certain documents or writings specified. 1 *Arch. Pr.* 170. 3 *Bl. Com.* 382. Said not to be in the Register. 9 *East*, 473.

**SUBREPTIO, Surreptio.** Lat. [from *subripere*, from *sub*, under, and *rapere*, to take or seize.] In the civil law. The obtaining a grant from the sovereign by false representations. *Calv. Lex.* The French *subreption* is used in the same sense. *Bouvier.* Hence the word *surreptitious*.

**SUBROGARE, Surrogare.** Lat. In the civil law. To substitute; to put in the place of. *Calv. Lex.*

To add to (a law.) *Taylor's Civ. Law*, 155. *Dig.* 50. 16. 102, in gloss.

**SUBROGATION.** Fr. and Eng. [from Lat. *subrogatio*, from *subrogare*, q. v.] In the civil law. The substitution of one person or thing in the place of another.

Strictly, the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter. The mode by which a third person, who pays a creditor, succeeds to his rights against the debtor.\* *Subrogatio est transfusio unius creditoris in alium, eadem vel mitiori conditione*; subrogation is the transference of one creditor to another, with the same or with modified rights. *Merlin Q. de Droit*, verb. *Subrogation*.

This term has been extensively adopted in American law, especially of late. See 6 *Penn. St. (Barr's) R.* 504.

It is a settled rule, that in all cases where a party, only secondarily liable on an obligation, is compelled to discharge it, he has a right, in a court of equity, to stand in the place of the creditor, and be *subrogated* to all his rights against the party primarily liable. 24 *Mississippi R.* 665. The right of *subrogation* is an inherent and natural equity growing out of the circumstances of the case. *Id.* *Subrogation* gives to the substitute all the rights of the party for whom he is substituted. 4 *Maryland Ch. Dec.* 253.

**SUBROGUER, Surroguer.** L. Fr. To make a deputy or surrogate; to substitute. *Kelham*.

**SUBSCRIBE.** [from Lat. *subscribere*, q. v.] In the law of contracts. To write under; to write at the bottom or end of a writing or instrument; to write the name under. See 26 *Wendell's R.* 341. 2 *Selden's R.* 9.

**SUBSCRIBERE.** Lat. [from *sub*, under, and *scribere*, to write.] To write under, or at the bottom of a writing or instrument; to write the name under; to underwrite; to subscribe.

In the civil law. To consent or assent to a thing. *Calv. Lex. Subscribere in crimen. Id.*

To take part in a proceeding; to join with another in an action, (*querelam una experiri.*) *Id.*

To pronounce a judgment; to grant a decree. *Id.*

**SUBSCRIPTIO.** Lat. [from *scribere*, q. v.] In the civil law. A writing under, or under-writing; a writing of the name under or at the bottom of an instrument by way of attestation or ratification; subscription. The *scriptio testium*, (subscription of witnesses,) was one of the formalities in the execution of wills, being required by the imperial constitutions in addition to the *seals* of the witnesses. *Inst.* 2. 10. 3.

That kind of imperial constitution which was granted in answer to the prayer of a petitioner who was present. *Calv. Lex.*

**SUBSCRIPTION.** [from Lat. *scriptio*, q. v.] The writing of the name or signature under, or at the foot of an instrument, by way of execution or attestation. See *Subscribere*.

**SUBSELLIA.** Lat. [from *sub*, under, and *sella*, a scat.] In the Roman law. Lower seats or benches, occupied by the *judices*, (judges or jurors,) and by inferior magistrates when they sat in judgment, as distinguished from the *tribunal* of the prætor. *Calv. Lex. Budæus.*

**SUBSIDY.** [Lat. *subsidium*, support.] In English law. An extraordinary grant of money by the parliament to the crown. Now more commonly termed a *supply*, or in the plural, *supplies*. 1 *Bl. Com.* 307.

**SUBSIGNARE.** Lat. [from *sub*, under, and *signare*, to seal or sign.] In the civil law. To undersign; to subscribe. According to the strict etymology, to *seal* under, or seal. But the word is said, in the Digests, to have been used among the ancient Romans in the sense of *writing*. *Subsignatum dicitur quod ab aliquo subscriptum est, nam veteres subsignationis verbo pro adscriptione uti solebant*; that is said to be undersigned which is underwritten by any one, for the ancients were accustomed to use the word *subsignatio* for *adscriptio*. *Dig.* 50. 16. 39. Some copies

of the Digests have *subscriptione* in place of *adscriptione*.

**SUBSTANCE.** [Lat. *substantia*.] Essence; the material or essential part of a thing, as distinguished from *form* or *circumstance*. The law favoureth matters of substance more than matters of circumstance. *Finch's Law*, b. 1, ch. 3, num. 39.

**SUBSTITUTIO.** Lat. [from *substituere*, to substitute.] A putting of one person in the place of another.

In the civil law. The appointment of one person as heir, in place of another, in the event of the first not taking the inheritance. As, *si ille hæres non erit, ille hæres esto*; if such a one will not be heir, let such a one be heir. *Inst.* 2. 15, pr. And a testator might appoint one heir after another in this way, to what extent he pleased, (*in quantum velit, testator substituere potest*), which was called making several grades of heirs, (*plures gradus hæredum*), the person last named, without further alternative, being termed *necessary heir*, (*necessarius hæres*), or heir at all events. *Id. ibid.*

**SUBSTITUTION.** In modern civil law. The designation of a person in a will, to take a devise or legacy, either on failure of a former devisee or legatee, or after him.\* *Brande. Bouvier.*

In Scotch law. An enumeration of a series of heirs, described in proper technical language. *Bell's Dict.* Taken from the Roman *substitutio*, (q. v.)

**SUBTRACTION.** [from Lat. *subtractio*, from *subtrahere*, to draw away.] In English law. The offence of withholding or keeping from another, that which by law he is entitled to; as suit and service from a lord, tithes from a parson; the keeping back of legacies by an executor; the withholding of conjugal rights from a husband or wife; the refusing to pay church rates, &c. 2 *Bl. Com.* 88, 94, 98, 230. 2 *Crabb's Real Prop.* 1074, § 2471. *Holt-house.*

**SUBVASSORES, Subvalvassores.** L. Lat. In old Scotch law. Base holders; inferior holders; they who held their lands of knights. *Skene de Verb. Signif.*

**SUB-VICECOMES.** L. Lat. [L. Fr. *south-viscount*.] In old English law. Under-sheriff. *Spelman.* 9 *Co.* 49 b.

**SUCCESSIO.** Lat. [from *succedere*, to succeed, to come in place of, to come under, from *sub*, under, and *cedere*, to come.] In the civil law. A coming in place of another, on his decease; a coming into the es-

tate which a deceased person had at the time of his death. This was either by virtue of an express appointment of the deceased person by his will, (*ex testamento*), or by the general appointment of law in case of intestacy, (*ab intestato*.) *Inst.* 2. 9. 7. *Id.* 3. 1. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 10. *Id.* lib. 3, tit. 13.

The term *successio* is used by Bracton in the same general sense, but particularly in the latter, or, in other words, as descriptive of that transmission of property by act of law, in case of death, which is termed in modern law *descent*. But his application of it shows that the Roman ideas of succession were not by any means implicitly adopted. His analysis of the word itself places it in contrast with *antecessio*, and *antecessor*, (*ancestor*), terms wholly unknown, in this sense, to the Roman law. *Antecessores—qui mortui sunt, et hæredes antecedunt*, i. cedunt ante, *et hæredes cedunt eis sub, quasi succedunt. Est enim cedere, quasi recedere, et est cedere alio sensu venire.* (Ancestors who are dead, and precede their heirs, i. e. go before, (*cedunt ante*), and the heirs succeed, or, as it were, come under (*cedunt sub*), them. For *cedere* is, as it were, *recedere*, to go from, but, in another sense, it signifies to come.) *Bract.* fol. 67. Again, the terms *successio* and *hæreditas* were clearly distinguished in the Roman civil law, the latter word signifying the estate itself; the former, the means by which it was attained. See *Inst.* 2. 9. 7. But Bracton uses them as synonymous. *Hæreditas est successio in universum jus quod defunctus antecessor habuit, &c.*; inheritance is the succession to the whole right which the deceased ancestor had, &c. *Bract.* fol. 62 b.

Britton uses the Fr. *succession* in a similar way, to denote the attainment of property as heir. *Britt.* c. 119. And *succession* is still employed in the law of France and Scotland, in the general sense of the civil law. See *Succession*. But in the common law, it has been for the most part superseded by the term *descent*, (q. v.)

**SUCCESSION.** Fr. and Eng. [from Lat. *successio*, q. v.] In Scotch and modern civil law. A right to enter upon that estate, real or personal, which one deceased had at the time of his death. 1 *Forbes' Inst.* part 3, p. 74. See *Hallifax, Anal.* b. 2, c. 5, num. 20.—Succession is where one comes to enjoy property in place of another. *Bell's Dict.*

In the Civil Code of Louisiana, it is variously defined; as,

The transmission of the rights and obligations of one deceased to his heir. Art. 867.

The whole estate, rights and charges, which a person leaves after his death. Art. 868.

That right by which the heir can take possession of the estate of the deceased, such as it may be. Art. 870. In both the latter senses, it is made synonymous with inheritance, (*hérédité*.)

**SUCCESSION.** In the common law. The right by which one set of men may, by succeeding another set, acquire a property in all the goods, moveables and other chattels of a corporation. 2 *Bl. Com.* 430. The power of perpetual *succession* is one of the peculiar properties of a corporation. 2 *Kent's Com.* 267.

**SUCCESSOR.** Lat. and Eng. [from *succedere*, to succeed, to come in place of.] One who follows another; one who comes into the place of another; one who comes into, and occupies the place which another has left; the correlative of *predecessor*. A term applied to corporations, in the same sense as *heir* to individuals. The *successors* of a corporation correspond to the heirs of a natural person. See 2 *Bl. Com.* 430, 431. 2 *Kent's Com.* 273.

**SUCCESSION.** L. Fr. Cutting. *Dyer*, 35 b, (Fr. ed.)

**SUCCURRITUR.** Lat. In old English law. Relief (or succor) is given. *Fleta*, lib. 2, c. 62, § 1; c. 63, § 4.

*Succurritur minori; facilis est lapsus juvenutis.* A minor is [to be] aided; a mistake of youth is easy, [youth is liable to err.] *Jenk. Cent.* 47, case 89.

"SUCH," in a will, construed. 11 *East*, 594.

**SUCKEN.** Sc. In Scotch law. Lands bound or astricted to a particular mill, or the tenants or proprietors of which are bound to use a particular mill. *Bell's Dict.*

To SUE. [from L. Fr. *suer*, *seure*, *suyre*, from Lat. *sequi*, to follow.] In practice. To follow at law; to prosecute judicially; to commence a suit; to bring an action.

To prosecute an action already commenced; to follow up an action to its proper termination. This seems to have been the original meaning of the word. See *Suer*.

To SUE OUT. In practice. To obtain judicially; to issue. Applied only to process; particularly such as is granted special-

ly. To *sue out* a writ is to obtain and issue it; to issue it on leave obtained for the purpose.

**SUER, Seuer, Suyre.** L. Fr. To follow; to sue; to prosecute or follow up. *Que trova seuerte de suer sa pleynte*; who shall find surety to prosecute his plaint. *Britt. c. 27. Si nul voet suer, eit le roy la suit*; if no one will sue, the king shall have the suit. *Stat. Westm. 1, c. 1.*

**SUERTE, Seurte.** L. Fr. Surety. *Britt. c. 26, 27.*

**SUERTE.** Span. In Spanish law. A small lot of ground. 5 *Texas R.* 83.

**SUFFERANCE.** [from L. Fr. *suffraunce*; L. Lat. *patientia*.] Toleration; permission, without right; permission by neglect to enforce a right. See *Estate at sufferance*.

**SUFFRAGAN.** [L. Lat. *suffraganeus*.] In English ecclesiastical law. A title given to bishops, who are styled *suffragan* in respect of their relation to the archbishop of their province. But formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These are called suffragan bishops, and resemble the *chorepiscopi*, or bishops of the country, in the early times of the Christian church. 1 *Gibson's Codex*, 155. *Hargr. Co. Litt.* 94 a, note 3.

**SUFFRAGIUM.** Lat. In the Roman law. A vote; the right of voting in the assemblies of the people. *Butler's Hor. Jur.* 27.

Aid or influence used or promised to obtain some honor or office; the purchase of office. *Cod. 4. 3. Nov. pr. § 1. Id. per tot.*

**SUFFRAUNCE.** L. Fr. Sufferance. *Par la suffraunce et la negligence le verrey possessor*; by the sufferance and neglect of the true possessor. *Britt. c. 47.*

**SUGGESTIO FALSI.** Lat. Representation of untruth; false representation. To recite in a deed that a will was duly executed, when it was not, is *suggestio falsi*; and to conceal from the heir that the will was not duly executed, is *suppressio veri*. 1 *P. Wms.* 240. See *Suppressio veri*.

**SUGGESTION.** [Lat. *suggestio*, from *suggerere*, to suggest.] In practice. A statement or entry made on a record by way of information to the court; a statement made incidentally, or out of the course of pleading; a statement on record, of some fact which has occurred in the progress of

a cause, such as the death of a co-plaintiff. 2 *Arch. Pr.* 294. *Arch. Forms.* 561.

**SUGGRUNDIA, Subgrundia, Suggrunda, Subgrunda, Sugrunda.** Lat. In the Roman law. The caves of a house. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 3, § 403, note. *Calv. Lex. Brissonius.*

**SUI HÆREDES.** Lat. In the civil law. One's own heirs; proper heirs. *Inst.* 2. 19. 2. *Dig.* 38. 16. See *Hæredes sui*.

**SUI JURIS.** Lat. In the civil law. One's own master; independent; not subject to the power of another. The title of one of the leading divisions of persons. *Quædam personæ sui juris sunt, quædam alieno juri subjectæ*; some persons are independent, some subject to another's power. *Inst.* 1. 8, pr. *Sui juris sunt omnes qui non sunt in aliena potestate*; all those are *sui juris* who are not in another's power. *Bract.* fol. 6. See *Dig.* 1. 6.

Having capacity to manage one's own affairs; not under legal disability to act for one's self. See *Story on Agency*, § 2. 9 *East*, 206.

**SUICIDE.** [L. Lat. *suicidium*, from *sui*, of one's self, and *cædes*, a killing; *felonia de se*.] In criminal law. The felonious killing of one's self; the deliberate and intentional destruction of one's self, by a person of years of discretion and in his senses; self murder.\* 4 *Bl. Com.* 189. Suicide involves the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties. Self-slaughter by an insane man, or a lunatic, is not an act of suicide, within the meaning of the law. *Nelson, C. J., 2 Hill's (N. Y.) R.* 75. See *Felo de se*.

In a larger sense,—the voluntary killing of one's self, from whatever cause. See 5 *Man. & Gr.* 639. 3 *Man. Gr. & Scott*, 458.

**SUIT.** L. Fr. and Eng. [L. Lat. *secta*, from *sequi*, to follow; Lat. *lis, actio*.] A following; pursuit; prosecution.\* The prosecution of some claim, demand, or request. *Marshall, C. J. 6 Wheaton's R.* 407.

In law language, the prosecution of some demand in a court of justice. *Id. ibid.* A following, or following up at law; the pursuit of a right or remedy in form of law; judicial prosecution. In this sense, *suit* is a term of more comprehensive import than *action*, though commonly used as synonymous with it. Sir Matthew Hale speaks of "the business of prosecution or *suit*," "the business of *suit*." *Anal.* sect. lii. liii. In Finch's words, "*suit* is the parties

dealing in the action." *Law*, b. 4, ch. 2. According to Lord Coke, the word *suit* includes an execution, but the word *action* does not. Thus, if the body of a man be taken in execution, and the plaintiff release all *suits*, the execution is gone, but if he release all *actions*, the defendant shall remain in execution. *Co. Litt.* 291 a. See 10 *Wharton's R.* 30, Marshall, C. J. 2 *Peters' R.* 449. 14 *Id.* 564.

In a stricter sense,—an action. The terms *suit* and *action* are constantly used as synonymous. Thus Blackstone speaks of "the redress of private wrongs by *suit* or *action* in courts." 3 *Bl. Com.* 3. "Mixed *actions* are *suits*," &c. *Id.* 118. And in every day practice, an action is constantly termed a suit. To *sue*, is to commence an *action*. But even in this application, *suit* is the more general term of the two, embracing proceedings both at law and in equity. The expression "*suit* at law," "*suit* in equity," "law *suit*," "chancery *suit*," are constantly employed; but the term *action* seems to be properly confined to law proceedings. "*Action* in equity" is an expression rarely or never used. See 10 *Paige's Chanc. R.* 516, 517, Walworth, C.

The term *suit* itself is purely French, and had various senses in the old common law, but, in the sense of an action or judicial prosecution, seems to be derived from that species of *suit* or *secta* which a plaintiff produced in court on making his count. See *infra*.

SUIT. L. Fr. and Eng. [L. Lat. *secta*; O. Sc. *soyt*.] In old English law. A following another; attendance by a tenant on his lord, especially at his court; called *suit of court*. A service by coming to the lord's court. *Finch's Law*, b. 2, ch. 6, p. 144. See *Secta curiæ*.

Attendance for the purpose of performing some service, as to grind at a certain mill. See *Secta ad molendinum*.

Pursuit of a fugitive felon. 1 *Bl. Com.* 297. See *Recens insecutio*.

A number of persons produced by a plaintiff in court, simultaneously with making his count or declaration, for the purpose of confirming his allegations. *Steph. Pl.* 429. See *Secta*.

SUIT, *Suyt*, *Suyte*. L. Fr. In old English law. Suit; action. *Et si nul voile suer, eit le roy la suit*; and if none will sue, the king shall have the suit. *Stat. Westm.* 1, c. 1. *Après quel temps cesse*

*leur suyt, et soit la suynt nostre*; after which time their suit [right of action] shall cease, and the suit shall be ours. *Britt. c.* 24.

The retinue, chattels, offspring and appurtenances of a villein. *Son villain ove-sue toute sa suite, et toutz ses chateux. Britt. c.* 31.

The followers of a plaintiff, whom he produced to support his count or declaration. *Car il en ad suyte bone et suffisante*; for he hath good and sufficient suit thereof. *Id. ibid. Que tiel fuit son droit, il tendy suit & dereigne bon*; that such was his right he offers suit and good proof. *Yearb. H.* 5 Edw. III. 41.

SUITAS. L. Lat. In the civil law. The condition or quality of a *suus hæres*, or proper heir. *Hallifax, Anal.* b. 2, c. 9, num. 11. *Calv. Lex.* This term seems to have been framed by the later civilians.

SUITOR. [L. Lat. *sectator*; O. Sc. *soytour*.] In old English law. One who attended at court; one who did *suit* at court; a tenant who attended his lord's court; one who attended court as a judge. In the Saxon county court, the *suitors of the court*, as they were called, that is, the freemen or landholders of the county, were the judges. 1 *Reeves' Hist.* 7.

A credible witness by whom a plaintiff supported his *loquela* or declaration; one of his *suit*, *secta*, or following. 1 *Reeves' Hist.* 248, 249.

In modern law. One who has a suit; a party to a suit; one who attends court as a party to a suit.

SULCUS. L. Lat. In old records. A small brook or stream of water. *Paroch. Ant.* 531. *Cowell*.

SULLERYE. In old English law. A plough-land. *Co. Litt.* 5 a. Perhaps a misprint for *sulling*, (q. v.)

SULLING. [L. Lat. *sulinga*.] In old English law. A plough-land. *Cowell*, voc. *Swoling*.

Sullings are explained to be elders, (alders, a species of tree,) in *Co. Litt.* 4 b.

SUM. [L. Lat. *summa*.] In English law. A summary or abstract; a compendium; a collection. Several of the old law treatises are called *sums*. Lord Hale applies the term to summaries of statute law. See *Summa*.

SUMA, *Summa*. L. Lat. In old English law. A horse-load; called, in English, a *soame*. *Cowell. Fleta*, lib. 2, c. 21.

A measure of grain containing eight

bushels; a quarter or *seam*. *Cowell. Spelman.*

**SUMAGE, Summage.** [L. Lat. *sumagium, summagium*.] In old English law. A horse-load; a full load, (*onus integrum*.) *Spelman. Cowell.*

A toll for carriage on horse-back. *Cowell.*

**Summa ratio est quæ pro religione facit.** That reason or argument is of paramount weight or authority which makes for [or operates in support of] religion. *Co. Litt.* 341 a. 5 *Co.* 14 b. 10 *Co.* 55 a. If ever the laws of God and man are at variance, the former are to be obeyed in derogation of the latter. *Broom's Max.* 17, [15.]

This maxim is taken from the civil law. **Summam esse rationem quæ pro religione facit.** *Dig.* 11. 8. 43. *Grotius, de Jur. Bell.* lib. 3, c. 12, sect. 7.

**Summa est lex quæ pro religione facit.** That is the highest law which makes for [goes in support of] religion. 10 *Mod.* 117, 119.

**SUMMA.** L. Lat. A summary; a compendium. The compendium of Hengham is divided into *Summa Magna*, and *Summa Parva*, which, in some of the old books, are called *sums*. See *Hengham*. Gilbert de Thornton, chief justice of the King's Bench in the reign of Edward I. was the author of a *summa* or abridgment of Bracton, of which Mr. Selden met with a copy in Lord Burleigh's library. *Crabb's Hist.* 199.

**SUMMAGIUM.** L. Lat. [from *summa*, q. v.] In old English law. A horse-load. *Pro equo qui portat summagium. Cart. de Forst.* c. 14.

**SUMMING UP.** In practice. The closing address of the counsel in a cause, before the court and jury, after the evidence has been gone through, recapitulating the testimony, and urging the conclusions sought to be drawn from it in behalf of the client.

In English practice, the judge, in charging the jury, is said to *sum up*. See *Charge*.

**SUMMONEAS.** L. Lat. (You summon.) In old practice. A writ of summons; a writ by which a party was summoned to appear in court. The emphatic word in many original writs, especially those of *præcipe quod reddat*, and in various others.

*Summoneas ad auxiliandum*; (you sum-

mon to aid.) A writ to summon a prayee in aid. *Roscoe's Real Act.* 280.

*Summoneas ad warrantizandum*; (you summoned to warranty.) A writ which issued to summon a party who had been vouched to warranty. *Roscoe's Real Act.* 268. 1 *Reeves' Hist.* 440.

**SUMMONER.** [L. Lat. *summonitor*.] In old practice. A person by whom a defendant was summoned to appear in court, in compliance with a writ. These persons are expressly mentioned in original writs; the sheriff being directed to summon the defendant "by good summoners." It was necessary that there should be two summoners at least, who, if required, might be able to testify that the summons was duly made. *Bract.* fol. 333 b. They are mentioned by Blackstone as sheriff's messengers, by whom defendants were summoned or warned to appear in court at the return of the original writ. 3 *Bl. Com.* 279.

A petty officer who called or cited persons to appear in court. Called, in old English, a *sumner*. *Cowell.*

**SUMMONITIO.** L. Lat. [from *summonere*, to summon.] In old English practice. A summoning or summons; a writ by which a party was summoned to appear in court, of which there were various kinds. *Spelman. Fleta*, lib. 6, c. 6.

A command or precept of the king that one be before him, to answer or to do something; or that one be, and have such a one to answer, or to do something. *Bract.* fol. 333.

A precept to the sheriff, that he cause some one to come, or attach him, or have the body of some one, or so attach him as to be secure of having his body. *Id. ibid.*

**SUMMONS.** [L. Fr. *sumounse*; L. Lat. *summonitio*.] In old practice. A writ directed to a sheriff, requiring him to summon a defendant to appear in court to answer a plaintiff's action. Original writs were, in their nature, for the most part, *summonses*.

A process by which a defendant was summoned to appear in court in compliance with an original writ, or by which he had notice that the writ had been issued. See 3 *Bl. Com.* 279. *Roscoe's Real Act.* 147, 148.

\* \* \* The process to bring the tenant or defendant into court in all real actions, with one or two exceptions, as in assise of novel disseisin and the writ of deceit, was a *summons*, commanding the sheriff to

summon the tenant to appear in court, according to the requisition of the writ. This command was contained in the original writ, and no separate writ of summons issued to the sheriff. *Id.* 146. The summons, when actually made, was made by the sheriff issuing his warrant to two persons, called *summoners* in the original writ, (and who usually were the sheriff's bailiffs,) directing them to command the tenant to render the land, as in the writ, and unless he should do so, to *summon* him to appear at the return of the writ. On receiving this warrant, the bailiffs prepared a summons, which pursued the form of the warrant, and served it on the tenant of the land. This was the correct practice, as stated by Mr. Roscoe, though according to Booth and Mr. Serjeant Williams, no actual summons was, in their time, ever made in any real action. *Id. ibid.*

**SUMMONS.** In modern practice. A writ or process by which an action is commenced, the defendant being thereby summoned to appear in court to answer the plaintiff.\* In England, all personal actions are now commenced by one uniform writ of summons, which is a writ issued out of the court in which the action is brought, directed to the intended defendant, commanding him to cause an appearance to be entered in the action within eight days after the writ shall have been served upon him. 3 *Steph. Com.* 566.

The word *summons* is immediately derived from the L. Fr. *somounse*, and seems to be merely the Lat. *summoneas*, slightly contracted. See *Summoneas*.

**SUMMUM JUS.** Lat. Strict right; extreme right. 3 *Bl. Com.* 392. Lord Mansfield, C. J. 1 *Burr.* 54. The extremity or rigor of the law. *Burr. Sett. Cas.* 588. Lord Bacon applies the phrase to strict law, untempered by equity. *Works*, iv. 274.

**Summum jus, summa injuria.** The rigor of the law is the height of injury, or, (to preserve the antithesis more closely,) extreme right is extreme wrong. *Hob.* 125. *Branch's Pr.* Right carried to an extreme becomes wrong.

**SUMPTUARY LAWS.** [from Lat. *sumptus*, expense.] Laws passed by a government to restrain the expenditure of its subjects or citizens, either in apparel, food or otherwise; laws against luxury and extravagant expenses of living.\* In

England, there were formerly a multitude of penal laws to restrain excess in apparel, chiefly made in the reigns of Edward III. Edward IV. and Henry VIII. all of which were repealed by the statute of 1 Jac. I. c. 25. 4 *Bl. Com.* 170. See *Montesquieu, Esprit des Loix*, liv. 7, cc. 1—6. 2 *Kent's Com.* 329, 330.

**SUNDAY.** [Lat. *Dies Solis, Dies Dominicus.*] The first day of the week, on which no judicial act can be done, and no arrest made except in criminal cases. 3 *Bl. Com.* 290. 3 *Chitt. Gen. Pr.* 104. 13 *Wendell's R.* 425. But a private contract made on Sunday is not for that reason invalid. *Id. ibid.* In Alabama, all contracts made on Sunday, unless under the circumstances and for the purposes specified, are, by statute, declared void. *Code of Alabama*, (ed. 1852,) § 1571.

In computing the time of notices and rules in practice, intermediate Sundays are included and counted with ordinary week days; but where the last day falls on Sunday it is usually excluded, and the party has the whole of the following Monday. See 3 *Chitt. Gen. Pr.* 702.

**SUP'D'C'US.** A contraction of *supradictus*, (q. v.) 1 *Inst. Cler.* 13.

**SUPELLEX.** Lat. In the Roman law. Household furniture. *Dig.* 33. 10.

**SUPER.** Lat. Upon; above; over.

**SUPER.** A term in the English exchequer. *Bunb.* 117.

**SUPER ALTUM MARE.** L. Lat. On the high sea. *Hob.* 212. 2 *Ld. Raym.* 1453. *Molloy de Jur. Mar.* 231. 1 *Kent's Com.* 378.

**SUPER VISUM CORPORIS.** L. Lat. Upon view of the body. 1 *Bl. Com.* 348. The inquisition must be *super visum corporis*. 11 *Mod.* 271.

**SUPERARE RATIONES.** L. Lat. In old Scotch law. To have a balance of account due to one; to have one's expenses exceed the receipts. *Skene de Verb. Sign. voc. Scaccarium.*

**SUPERDEMANDA.** L. Lat. In old English practice. An over demand; a demand of more than was just or due. *Cadit in misericordiam pro superdemanda*; becomes subject to amercement for his over demand. *Bract. fol.* 179 b.

**SUPERFICIARIUS.** Lat. [from *superficies*, q. v.] In the civil law. One to whom a *superficies*, or right of surface, was granted; a superficiary. 1 *Mackeld. Civ. Law*, 362, 363, §§ 329, 330.

*Superficiaræ ædes* were buildings erected on hired ground, (*in conducto solo.*) *Dig.* 43. 18. 2.

**SUPERFICIES.** Lat. In the civil law. Surface; every thing on the surface of a piece of ground or of a building, and which is so closely connected with it by art or nature, as to constitute a part of the same; as houses, trees and vines. 1 *Mackeld. Civ. Law*, 361, § 329. See *Dig.* 43. 18. According to Dr. Kaufmann, *superficies* or *superficiū* properly signifies the surface, or every thing connected with the surface of a piece of ground; in legal language, however, it denotes the things connected with the surface of another's ground as its accessory parts, and especially a real right in them which is granted to a person, (*jus in re aliena.*) *Id. ibid.* note.

**Superflua non nocent** [noceant.] Superfluities do [should] not prejudice. *Jenk. Cent.* 184. *Cod.* 6. 23. 17. Surplusage does not vitiate.

**SUPERINDUCTIO.** Lat. In the civil law. A species of obliteration. *Dig.* 28. 4. 1. 1. See *Inductio*.

**SUPERIOR.** In Scotch law. One of whom lands are held by another, answering to the lord, (*dominus*.) of the English law. One who had the *dominium directum*, (direct property,) of lands; the direct proprietor. See 1 *Forbes' Inst.* part 2, p. 97. —The grantor of a feudal right, to be held of himself. *Bell's Dict.*

**SUPERIOR COURTS.** In English law and practice. The courts of the highest and most extensive jurisdiction. A general term of description, including the *Court of Chancery*, and the three common law courts of *Queen's Bench*, *Common Pleas*, and *Exchequer*, which, from the circumstance of their being all holden at Westminster, are otherwise termed *the Courts at Westminster*. 3 *Steph. Com.* 405.

According to Sir Matthew Hale, the term *superior*, as applied to courts, denotes a lower degree than *supreme*. *Hale's Anal.* sect. xi.

**SUPERIOR AND VASSAL.** In Scotch law. A feudal relation corresponding with the English *lord and tenant*. See *Bell's Dict.* 3 *Bell's Appeal Cases*, 128.

**SUPERIORITY.** In Scotch law. The *dominium directum* of lands, without the profit. 1 *Forbes' Inst.* part 2, p. 97. See *Bell's Dict.*

**SUPERONERARE.** L. Lat. [from *super*, over, and *onerare*, to burden.] In old English law. To surcharge; to overburden. *Superoneravit*; has surcharged. 3 *Bl. Com.* 238. *Quod talis injuste superoneravit communem pasturam suam*; that such a one has unjustly surcharged his common pasture. *Bract.* fol. 229.

**SUPERONERATIO.** L. Lat. [from *superonerare*, q. v.] In old English law. Surcharge; a surcharging; a putting of more cattle on a common than the pasture would sustain, or than the party had a right to do. *Duo competunt remedia de superoneratione; vel amensuratio, vel assisa novæ disseysinæ de communia pasturæ*; two remedies lie for the surcharge; either an admeasurement, or an assise of novel disseisin of the common of pasture. *Bract.* fol. 229 b. See *Fleta*, lib. 4, c. 23, § 4.

**SUPERPLUSAGIUM.** L. Lat. In old English law. Overplus; surplus; residue or balance. *Bract.* fol. 301. *Spelman.*

**SUPERSEDE.** [Lat. *supersedere*, from *super*, above, and *sedere*, to sit.] Literally, to set above; to make void or inoperative by a superior authority.

To stay, suspend or discharge some judicial proceeding, by another proceeding of higher efficacy. In this way, one writ is frequently superseded by another writ; as execution by a writ of error, a *capias* by a *supersedeas*, (q. v.)

In old practice. To omit; to forbear; to refrain or desist from doing a thing. In this sense, (which is the proper classical meaning,) the word is uniformly used in the writs in the Register, being applied to persons exclusively. Thus, a sheriff is commanded that he *supersede* taking the body of a party; bailiffs, that they *supersede* holding plea, &c. See *Supersedeas*. And the word is used in the same sense in modern writs of *supersedeas*.

To neglect; to disregard; to refuse to do. *Quam si supersederint, tunc primo distringantur*; which, if they disregard, they shall first be distrained. *Fleta*, lib. 2, c. 60, § 36; c. 62, § 3.

**SUPERSEDEAS.** Lat. (You supersede or desist.) In practice. A writ issued for the purpose of relieving a party from the operation of another writ, which has been or may be issued against him; a writ issued to a ministerial officer, commanding him to desist from executing or acting under another writ, which has been, or may be, delivered to him. Thus, a de-

fendant may, in certain cases, procure his discharge from custody, under a *capias*, by obtaining a writ of *supersedeas* to be directed to the sheriff for that purpose. 1 *Tidd's Pr.* 279. 1 *Burr. Pr.* 399.

The name of this writ is derived from its emphatic word in the Latin forms, a great variety of which are to be found in the Register. *Tibi præcipimus quod captioni corporis prædicti Roberti, occasione præmissa, supersedeas usque ad, &c.*; we command you that you supersede the taking of the body of the aforesaid Robert, on the occasion aforesaid, until, &c. *Reg. Orig.* 70 b, 71 a. *Vobis præcipimus quod, si ita est, tunc executioni judicii per vos in curia prædicta reddit omnino supersedeatis*; we command you that if it be so, then you wholly supersede the execution of the judgment rendered by you in the court aforesaid. *Id.* 145. And see *Id.* tabula.

**SUPER-VIDERE.** L. Lat. In old English law. To over-see. *Fleta*, lib. 2, c. 73, § 4.

**SUPPLEMENT, Letters of.** In Scotch practice. A process by which a party not residing within the jurisdiction of an inferior court, may be cited to appear before it. *Bell's Dict.*

**SUPPLEMENTAL AFFIDAVIT.** In practice. An affidavit made in addition to a previous affidavit, for the purpose of supplying some deficiency in it. See 1 *Burr. Pr.* 344.

**SUPPLEMENTAL BILL.** In equity pleading. A bill filed in addition to an original bill, in order to supply some defect in its original frame or structure. *Story's Eq. Pl.* § 332. It is the appropriate remedy where the matter sought to be supplied cannot be introduced by amendment. *Id. ibid.* § 333. *Id.* §§ 334—338. See 3 *Bl. Com.* 448.

**SUPPLETORY OATH.** In modern civil law. An oath administered to a party himself, in cases where a fact has been proved by only one witness, in order to *supply* or make up the necessary complement of witnesses; two witnesses being always required to constitute full proof.\* 3 *Bl. Com.* 370. *Hallifax, Anal.* b. 3, c. 9, num. 30.

**SUPPLICATIO.** Lat. In the civil law. A pleading corresponding to the rejoinder of the common law. *Calv. Lex. voc. Explicatio.*

**SUPPLICAVIT.** Lat. (He hath besought.) In practice. A writ in the nature

of process at the common law, to find sureties of the peace upon articles filed by a party for that purpose. Now rarely used. 2 *Story's Eq. Jur.* § 1476. 4 *Bl. Com.* 253. See *Gilbert's For. Rom.* 202. 2 *Rep. in Ch.* 68.

**SUPPLICIUM.** Lat. In the civil law. Punishment. *Cod.* 1. 9. 9.

**SUPPO'IT.** A contraction of *suppositus*. 1 *Inst. Cler.* 13.

**SUPPONERE.** Lat. In old English law. To put under; to put in place of another; to substitute fraudulently; to put a false thing in place of the true or genuine; to put a strange child in place of the true heir. *Aliquando partus supponitur ab uxore, —et aliquando à custode, qui (mortuo vero hærede) supponit extraneum, et nutrit ut hæredem*; sometimes a child is fraudulently substituted by the wife, and sometimes by the guardian, who (on the death of the true heir) substitutes a strange child and brings it up as heir. *Bract.* fol. 69. *Partus suppositus*; a substituted or suppositious child. *Id. ibid.*

**SUPPORT, Right of.** A right arising from contract, or prescription which supposes a contract, where the owner of a house stipulates to allow his neighbor to *rest* his timbers on the walls of his house. 3 *Kent's Com.* 436.

**SUPPRESSIO VERI.** Lat. Suppression or concealment of the truth; one of the classes of fraud. "It is a rule of equity as well as of law, that a *suppressio veri* is equivalent to a *suggestio falsi*; and where either the suppression of the truth, or the suggestion of what is false can be proved, in a fact material to the contract, the party injured may have relief against the contract." Spencer, C. J. 18 *Johns. R.* 405. See 13 *Peters' R.* 36, Barbour, J. See *Suggestio falsi*.

**SUPRA.** Lat. Above; over.

**SUPRA PROTEST.** (Over protest.) In mercantile law. A term applied to an acceptance of a bill by a third person, after protest for non-acceptance by the drawee. 3 *Kent's Com.* 87.

**SUPRADICTUS.** L. Lat. Above said; aforesaid.

**SUPREMA VOLUNTAS.** Lat. The last will. *Et suprema voluntas quod mandat fierique jubet, parere necesse est*; and what a last will commands and orders to be done, must be obeyed. Doderidge, J. *Latch*, 137.

**SUPREMUS.** Lat. In the civil law. Last; the last. *Supremus est quem nemo*

**sequitur.** He is last, whom no one follows. *Dig.* 50. 16. 92.

**SUPREME.** [from Lat. *supremus*, highest.] The proper title of the highest courts in a state. *Hale's Anal.* sect. xi.

**SUR.** L. Fr. Upon. *Sur cognizance de droit*; upon acknowledgment of right. See *Fine of lands*.

**SURCESSER.** L. Fr. In old practice. To supersede; to desist; to surcease. *Yearb.* H. 3 Hen. VI. 15.

**SURCHARGE.** L. Fr. and Eng. [Lat. *superoneratio*.] The putting by a commoner, of more beasts on the common than he has a right to. 3 *Bl. Com.* 237.

In equity practice. The showing an omission in an account for which credit ought to have been given. *Pulling on Merc. Accounts*, 161. 1 *Story's Eq. Jur.* § 525. It is used in contradistinction to the word *falsify*. *Id. ibid.*

**SURCHARGER.** L. Fr. To surcharge. *Surcharger cele commune.* *Britt.* c. 58.

**SURDRE.** L. Fr. To arise; to be raised. *Purrount surdre excepciones*; exceptions or pleas may be raised. *Britt.* c. 48.

**SURDUS.** Lat. In the civil law. Deaf; a deaf person. *Inst.* 2. 12. 3. *Surdus et mutus*; a deaf and dumb person. *Id. ibid.* *Dig.* 28. 1. 6. 1. *Id.* 28. 1. 7. *Id.* 50. 17. 124. *Fleta*, lib. 6, c. 38, § 1; c. 40, § 2.

**SURETY.** [Lat. *fide-jussor*; O. Sc. *sovertie*.] One who is bound for another who is primarily liable, and is called the principal. One who engages to be answerable for the debt, default, or miscarriage of another; one who undertakes to do some act in the event of the failure of another to do it, and as a security for its being done. See *Suretyship*.

**SURETYSHIP.** [Lat. *fide-jussio*; *cautio*.] The liability or contract of a surety. A contract of suretyship is a contract whereby one person engages to be answerable for the debt, default, or miscarriage of another. *Pitman, Princ. & Surety*, 1, 2. See *Burge on Suretyship*, 1—15.

**SURMISE.** L. Fr. and Eng. In old practice. Suggestion. "The plaintiff, upon a *surmise* of goods come to the hands of the executors, shall have a *sci. fa.*" 1 *Leon.* 68. *Id.* 286. *Hardr.* 82. 311.

To **SURMISE.** In old practice. To suggest. "A plaintiff *surmised* by his counsel." 1 *Leon.* 44. "A juror did *surmise*." *Id.* 207.

**SURNOSME.** L. Fr. A surname; an over-name. *Britt.* c. 48.

**SURPLUS, Surplus.** L. Fr. Excess. *Britt.* c. 110.

**SURPLUSAGE.** L. Fr. and Eng. [L. *surplusagium*.] Excess; superfluity; more than is necessary or proper.

In old law. A sum remaining over; a balance. "Surplusage of an account." 1 *Leon.* 219.

In pleading. Unnecessary matter of whatever description. *Steph. Pl.* 422.

In a stricter sense,—matter wholly foreign and irrelevant. *Id. ibid.* note.

**SURPRISE.** L. Fr. and Eng. [from Fr. *surprendre*, from *sur*, over, and *prendre*, to take.] The state of being taken unexpectedly or unawares; sudden confusion or perplexity. Literally, an overtaking. One of the grounds of relief in equity.

Mr. Justice Story has observed, that "there does not seem any thing technical or peculiar in the word *surprise*, as used in courts of equity. Where a court of equity relieves on the ground of surprise, it does so upon the ground that the party has been taken unawares, and that he has acted without due deliberation, and under confused and sudden impressions." 1 *Story's Eq. Jur.* § 120, note.

In a looser sense, the word *surprise* is sometimes used to denote fraud, or something presumptive of, and approaching to fraud. *Id. ibid.*

**SURREBUTTER.** [from Fr. *sur*, above, and *rebutter*, q. v.] In pleading. The plaintiff's answer of fact to the defendant's *rebutter*. *Steph. Pl.* 59.

**SURREJOINDER.** [from Fr. *sur*, above, and *rejoinder*, q. v.] In pleading. The plaintiff's answer of fact to the defendant's rejoinder. *Steph. Pl.* 59.

**SURRENDER.** L. Fr. and Eng. [from *sur*, over, and *rendre*, to give or render.] A yielding up an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown [merge,] by mutual agreement between them. *Co. Litt.* 337 b. The falling of a less estate into a greater. 2 *Bl. Com.* 326. 4 *Kent's Com.* 103.

The giving up by bail, of their principal into custody, in their own discharge. 1 *Burr. Pr.* 394.

**SURRENDEROR.** In English law. A party who surrenders, or makes a surrender. 5 *East*, 132. 9 *Id.* 405.

**SURRENDEREE.** In English law. A party to whom a surrender is made.

**SURREPTITIOUS.** [Lat. *surreptitius*, from *surrepere*, to creep in, or under.] Stealthily or fraudulently done, taken away or introduced.

**SURROGATE.** [from L. Lat. *surrogatus*, from *surrogare* or *subrogare*, to substitute.] One who is substituted or appointed in the room or place of another; one who represents or acts for another.

In English law. A bishop's chancellor; an officer who usually presides in the bishop's diocesan court, and by whom, as the representative of the ordinary, letters of administration are granted where the spiritual court is not presided over by a judge. *Holthouse*.

In American law. A county officer who has jurisdiction in granting letters testamentary and letters of administration, and of other matters relating to the settlement of the estates of testators and intestates. 2 *Kent's Com.* 409, *et seq.*

**SURSISA.** L. Lat. [from L. Fr. *sursise*, q. v.] In old English law. Neglect; default. *Potest defendere summonitionem et sursisam*; he may defend [deny] the summons and the default. *Bract.* fol. 356.

**SURSISE.** L. Fr. [from *sursiser*, q. v.] In old English law. Neglect; omission; default; a ceasing or cessation. *De somounses, et de sursises, et de essoines.* *Britt.* c. 120. *E ki le cri orat e sursera, la sursise li Rei amend*; and whoever hears the cry [hue and cry] and neglects to pursue it, shall make amends for the neglect to the king. *LL. Gul. Cong.* l. 48.

**SURSISER, Surcesser.** L. Fr. To neglect; to omit doing a thing; to surcease; to fail to obey process. *Si levesque sursist nostre somounse, si soit attache de vener par destresse*; if the bishop fail to obey our summons, he shall be attached to appear by distress. *Britt.* c. 26. See *Sursise*.

**SURSUM REDDERE.** L. Lat. In old conveyancing. To render up; to surrender.

**SURSUM REDDITIO.** L. Lat. In old conveyancing. A surrender.

**SURVIVE.** [from Fr. *survivre*, from *sur*, over, and *vivre*, to live.] To outlive; to live beyond another; to over-live.

**SURVIVOR.** [See *survive*.] One who survives another; one who outlives another; one of two or more persons who lives after the other or others have deceased; the longest liver of two or more joint-tenants,

or of any two or more persons who have a joint interest in any thing. See 2 *Bl. Com.* 183, 184.

**Survivors, (plur.)** Two or more of certain individuals named or referred to, who are living when any other or others of them happen to die. See 1 *Cushing's R.* 118. 11 *Grattan's R.* 67.

This is the natural and proper meaning of the term, which is usually given to it by the courts, in the constructions of wills. 2 *Jarman on Wills*, 609—616, (435—439, Perkins' ed. 1849.) In some cases, however, *survivor* has been construed to mean *other*, where it has appeared necessary in order to give effect to the apparent intention of the testator. See *Id.* 616—619, (440—442, Perkins' ed.) 2 *Williams on Exec.* 1256.

**SUS.** L. Fr. Upon. *Susdit*; afore-said. *Kelham*.

**SUS. PER COLL.** L. Lat. An abbreviation of *suspendatur per collum*; let him be hanged by the neck. Words formerly used in England in signing judgment against a prisoner who was to be executed; being written by the judge in the margin of the sheriff's calendar or list, opposite the prisoner's name. 4 *Bl. Com.* 403. "Judgment was given *quod suspendatur per collum*." 11 *Mod.* 230. "All the men condemned at the Old Bailey are hanged by this short note,—*suspens. per coll.*" Holt, C. J. 5 *Id.* 22.

**SUSPENDERE.** L. Lat. In old English law. To hang; to execute by hanging. *Suspensus*; hanged. See *Sus. per coll.*

**SUSPENSION.** In Scotch law and practice. A writ passing under the signet, by which the diligence of the law, or the effect of a judgment of a court may be suspended. *Bell's Dict.*

**SUSUM.** In old European records. A form of the Lat. *sursum*, up, upwards. *Susum aut jusum* was written for *sursum aut deorsum*, up or down. *Spelman*, vocc. *Susum, Josum*. The phrase *sursum versum vel deorsum*, (upwards or downwards,) occurs in the Digests. *Dig.* 38. 10. 10. 9, 12. But in the late Kriegel editions of the Corpus Juris, *susum* is substituted for *sursum*.

**SUTE.** L. Fr. In old English law. Suit; prosecution; service. *Kelham*. *Sute à molyn*; suit at mill. See *Secta ad molendinum*.

**SUTH.** L. Fr. In old English law.

Under. *Suth dit*; under said; hereafter said. *Kelham*.

**SUTORIA.** L. Lat. In old English law. The trade or occupation of a shoemaker. *Etiam de hiis qui duobus utuntur officiis, videlicet, sutoriae et tanneriae*; also of those who practice two trades, for instance, those of shoemaker and tanner. *Fleta*, lib. 2, c. 52, § 35.

**SUUM.** Lat. His; his own. As to the construction of this word, in the civil law, see *Dig.* 56. 16. 239. 9.

**SUUS.** Lat. His. As to the construction of this word, in the civil law, see *Dig.* 32. 71, *et seq.*

**SUUS HÆRES.** Lat. In the civil law. A proper heir; a right heir. *Inst.* 3. 1. 4.

**SUUS JUDEX.** L. Lat. In old English law. A proper judge; a judge having cognizance of a cause. Literally, one's own judge. *Bract.* fol. 401.

**SUYT, Suyte.** L. Fr. Suit; following. *Britt.* c. 28.

**SUZEREIGN.** L. Fr. In French and feudal law. The immediate vassal of the king; a crown vassal. *Butler's Co. Litt.* Note 77, lib. 3.

**SWAIN-MOTE, Swein-mote, Swain-gemote.** [from Sax. *swang*, an attendant, or bocland-man, or freeholder, and *mote*, or *gemote*, a meeting.] In forest law. A court holden before the verderors, as judges, by the steward of the swain-mote, thrice in every year, the *sweins* or freeholders within the forest composing the jury. Its principal jurisdiction is first, to inquire into the oppressions and grievances committed by the officers of the forest; and secondly, to receive and try presentments certified from the court of attachments against offences in vert and venison. 3 *Bl. Com.* 71, 72. *Cowell*.

**SWANIMOTUM, Swainimotum, Swaynmotum.** L. Lat. In old English law. The swain-mote, or court of swainmote, (q. v.) *Spelman.* *Cart. de Forest.* c. 8.

**SWOLING, Swuling, Suling.** [from Sax. *sul*, a plough; L. Lat. *swulinga, sulinga*.] In old records. A plough-land, or hide of land. *Cowell.* *Spelman*.

**SWORN BROTHERS.** [Lat. *fratres jurati*.] In old records. Persons who by mutual oath covenanted to share each other's fortune. *LL. Edw. Conf.* c. 35. *Paroch. Ant.* 57. *Cowell*.

**SY, Si.** L. Fr. If; so. See *Si*.

**SYB & SOM.** Sax. Peace and secu-

rity. Words occurring in the laws of Canute. *Eallum Cristenū mannum syb & som gemene*; to all Christian men let there be common peace and security. *LL. Eccles. Canuti R.* c. 17.

**SYLVA.** Lat. In the civil law. Wood. See *Silva*.

In old Scotch law. "Ane wood neare adjacent to ane flude of water." *Skene de Verb. Sign. voc. Forestarius*.

**SYLVA CÆDUA.** Lat. In ecclesiastical law. Wood of any kind which was kept on purpose to be cut, and which being cut grew again from the stump or root. *Lyndw. Prov.* 190. 4 *Reeves' Hist.* 90. See *Silva cædua*.

**SYMBOLÆOGRAPHY.** [from Gr. *συμβολαιογράφος*, q. v.] The art of drawing written instruments. So defined by West, in his "Symboleography," part 1, lib. 1, sect. 1. West's Symboleography is referred to, as authority, by Mansfield, C. J. 2 *Taunt.* 85.

**ΣΥΜΒΟΛΑΙΟΓΡΑΦΟΣ, Συμβολαιογράφος.** Gr. [from *συμβολαιον*, an instrument, and *γράφειν*, to write.] In the civil law. A writer of instruments; a tabellion. *Nov.* 44, in tit. *Id. pr. Id. cc.* 1, 2. *Nov.* 47, c. 1. *Nov.* 73, c. 5.

**ΣΥΜΒΟΛΑΙΟΝ, Συμβολαίον.** Gr. In the civil law. An instrument in writing; a written instrument. *Nov.* 18, c. 10. *Nov.* 19. *Nov.* 44, pr. c. 1, §§ 1, 2, 4; c. 2. *Nov.* 47, in tit. *Id. pr. Id. c.* 1. *Id.* 73.

**SYMBOLIC DELIVERY.** In the law of sale. A delivery by symbol; the delivery of a thing by delivering another thing as the symbol or representation of it; as the delivery of goods deposited in a warehouse by delivering the key of the warehouse, the transfer of a ship at sea by the delivery of a bill of sale, and of a cargo by the indorsement and delivery of the bill of lading. 2 *Kent's Com.* 500—502. See 8 *Howard's R.* 399, Taney, C. J.

**ΣΥΜΠΛΟΙΑ, Συμπλοια.** Gr. [from *σύν*, together, and *πλέω*, to sail.] A sailing together; a sailing of vessels in company, (SYMPLOIA.) *Loccen. de Jur. Mar.* lib. 2, c. 2, § 1.

**ΣΥΝΑΛΛΑΓΜΑ, Συνάλλαγμα.** Gr. [from *συν*, together, and *ἀλλάττω*, to contract mutually, from *σύν*, together, and *ἀλλάττω*, to change.] In the civil law. An exchange or interchange; an exchange of acts by the parties to a contract; a reciprocal performance of both parties to a contract, each giving or doing

something; the giving or doing of one thing in exchange for, or in consideration of, the giving or doing of another thing. A mutual obligation; a contract. *Dig.* 50. 16. 19. It implied the doing of some act by both parties, in addition to the words of the contract. *Calv. Lex.* See *Cowell*, voc. *Quid pro quo*.

**SYNALLAGMATIC CONTRACT.** [from Gr. *συνάλλαγμα*, q. v.] In the civil law. A bilateral or reciprocal contract, in which the parties expressly enter into mutual engagements, each binding himself to the other. *Pothier Obl.* part 1, c. 1, sect. 1, art. 2. *Civil Code of Louis.* Art. 1758.

**SYNDIC.** In French law. The assignee of an insolvent's or bankrupt's estate. 9 *Peters' R.* 182. 17 *Howard's R.* 157.

A person elected by a commune, or other society, to have the care of their suits and legal affairs, or of their affairs generally. *Meredith's Emerigon on Ins.* 43, note.

An officer in a village, answering to the Span. *regidor*, whose duty was to see to the repairs of common fences. 12 *Peters' R.* 450.

**SYNDICUS.** Græco-Lat. [from Gr. *σύν*, with, and *δική*, a cause.] In the civil law. A defender (*defensor*;) one who was chosen to prosecute or defend a certain cause. *Dig.* 50. 4. 18. 13. Hence the modern *syndic*, (q. v.)

**SYNGRAPHON, Syngrapha.** See the next word.

**ΣΥΓΓΡΑΦΟΝ, Σύγγραφον.** Gr. [from *σύν*, together, and *γράφειν*, to write.] In the civil and canon law. A writing comprising some contract between two, and being indented in the top, answerable to another that likewise contains the same contract; an indenture. *Cowell*, voc. *Indenture*. *Co. Litt.* 229 a. The civilians defined this kind of instrument to be,—a writing indented between creditor and debtor, on the cutting of which (*in cujus scissura*, that is, the part where it was cut through,) is written in capital letters this word, **ΣΥΓΓΡΑΦΗ**, or, in the plural, **ΤΑ ΣΥΓΓΡΑΦΑ**; and it differs from a chirograph, (*χειρόγραφον*) because the latter is written by the hand of one only, say the debtor, and left in possession of the creditor. *Cowell*, *ub. sup.* See 2 *Bl. Com.* 296.

**SYNOTH, Synod.** A name given to the national councils of the Saxons, from

their religious character. *Crabb's Hist. Eng. Law*, 229. See *Michel-synoth*.

**SYR.** L. Fr. Sir. A word used by counsel in addressing a court. *Keilw.* 170 b. *Year Books*, passim.

## T.

**T.** An abbreviation of *Teste*, (q. v.) in old writs. 1 *Inst. Cler.* 13.

**T.** An abbreviation of *Termino*, or *Term*, in the old reports.

**T. R. E.** An abbreviation of *Tempore Regis Edwardi*, (in the time of King Edward,) of common occurrence in Domesday, when the valuation of manors, as it was in the time of Edward the Confessor, is recounted. *Cowell*.

**TABELLA.** Lat. In the Roman law. A tablet; a small table, on which something short might be written. Used in voting, and in giving the verdicts of juries; and when written upon, commonly translated *ballot*. *Adam's Rom. Ant.* 100, 285. The laws which introduced and regulated the mode of voting by ballot were called *leges tabellarie*. *Id.* 99. *Calv. Lex.* 1 *Kent's Com.* 232, note.

**TABELLIO.** Lat. [from *tabella*, or *tabula*, a tablet or written instrument; Gr. *συμβολαιογράφος*.] In the civil law. An officer whose functions were similar to those of the modern *notary*, being described as "a public writer of contracts," and "one who drew, wrote out, and attested instruments." *Calv. Lex.* See *Cod.* 4. 21. 16, 17. *Nov.* 7, c. 7. *Nov.* 44. *Nov.* 73. His office seems to have been to write out, in form, the rough drafts or *notes* of instruments prepared by another officer called *notarius*, and attest and authenticate their execution. *P. Cyclopædia*, voc. *Notary*. The *tabelliones* were important officers, having charge of the public records, and exercising in some cases judicial powers. *Brande*.

In France, the title and office of *tabellion* were united with those of notary, at an early period. In England, Matthew Paris, writing A. D. 1236, observes, that they were not known. *Tabellionum usus in regno Angliæ non habetur.* *Matt. Par.* fol. 424. *Cowell*. Bracton, however, distinctly mentions such an officer, and speaks of him as a public servant. *Tabellio qui dicitur servus publicus.* *Bract.* fol. 4 b.

**TABERNA.** Lat. [from *tabula*, a

board.] In the civil law. A shop, as being inclosed with boards, (*quod tabulis clauditur.*) *Dig.* 14. 3. 3. *Id.* 14. 3. 5. 10, 13. *Id.* 14. 3. 8. *Id.* 14. 3. 13. 2. *Id.* 14. 3. 18.

Any building fit for habitation, (*omne utile ad habitandum ædificium.*) *Dig.* 50. 16. 183.

A wine-shop. *Calv. Lex.*

In old English law. A drinking house; a tavern. Taverns and wakes (*tabernæ vigiliæque*.) are spoken of in *Fleta*, as places of nocturnal resort by servants, to the neglect of their duties. *Fleta*, lib. 2, c. 72, § 9. And see *Id.* c. 82, § 3.

TABERNACULUM. L. Lat. In old records. A public inn, or house of entertainment. *Consuet. Dom. de Farendon*, *MS.* fol. 48. *Cowell.*

TABERNARIUS. Lat. [from *taberna*, a shop.] In the civil law. A shop-keeper. *Dig.* 14. 3. 5. 7.

In old English law. A taverner or tavern-keeper. *Fleta*, lib. 2, c. 12, § 17.

TABLE RENTS. [L. Lat. *redditus ad mensam.*] In old English law. Rents paid to bishops or religious prelates, reserved or appropriated to their tables or house-keeping. *Cowell.*

TABLE DE MARBRE. Fr. In old French law. Table of Marble; a principal seat of the Admiralty, so called. These Tables de Marbre are frequently mentioned in the Ordonnance of the Marine. *Ord. Mar.* liv. 1, tit. 1, art. 10; tit. 2, art. 13; tit. 3, art. 3.

TABULA. Lat. In the civil law. A table or tablet; a thin sheet of wood which, when covered with wax, was used for writing.

An instrument written on such a tablet. *Tabulæ*, in the plural, is commonly used to signify a testament. *Inst.* 3. 10. 1. See *Id.* 2. 10. 12. *Dig.* 29. 3. *Id.* 37. 11. But it was immaterial, in this case, what was the material of the table; whether wood, or any other material, as paper, parchment, or the skin of an animal. *Dig.* 37. 11. 1, pr.

A tablet or board for painting pictures on. *Inst.* 2. 1. 34. *Si quis in aliena tabula pinxerit, quidam putant tabulam picturæ cedere; aliis videtur picturam, qualiscunque sit, tabulæ cedere; sed nobis videtur melius esse, tabulam picturæ cedere. Ridiculum est enim picturam Apellis vel Parrhasii in accessionem vilissimæ tabulæ cedere; if one should paint on the tablet of*

another, some think that the tablet goes with the painting; others think that the painting, of whatever kind it be, goes with the tablet; but it appears to us to be the better opinion that the tablet should go with the painting. For it would be ridiculous that a painting of Apelles or Parrhasius should go as an accessory to a worthless tablet. *Id. ibid.* See 1 *W. Bl.* 324; Blackstone, arg.

TABULA. Lat. A board or plank.

*Tabula in naufragio*; a plank in a shipwreck. A figurative expression used in the English books, to denote that preference or priority among mortgagees, for which they are allowed to struggle, and which is gained by *tacking*. The English doctrine of tacking was first solemnly established in *Marsh v. Lee*, (2 *Vent.* 337,) under the assistance of Sir Matthew Hale, who compared the operation to a *plank* in a *shipwreck*, gained by the last mortgagee. 4 *Kent's Com.* 177.

TABULÆ. Lat. In the Roman law. Tables. Writings of any kind used as evidences of a transaction. *Adam's Rom. Ant.* 284. *Brissonius.*

*Tabulæ accepti et expensi*; tables of receipt and expense; account books. *Ad. Rom. Ant.* 284, 547.

TABULARIUS. Lat. [from *tabula*, q. v.] A notary, or tabellio. *Calv. Lex.* An officer who drew up or prepared writings, (*tabulæ*.) *Nov.* 73, c. 8. See *Tabellio*.

TAC, *Tak*. In old records. A kind of customary payment by a tenant. *Cowell.*

TAC-FREE. In old records. Free from the common duty or imposition of *tac*. *Cowell.*

TACIT. [from Lat. *tacitus*, q. v.] Implied; not expressed. See *Tacitus*.

TACITUS. Lat. [from *tacere*, to be silent.] Silent; not speaking; not expressed in words; tacit; implied. *Conditio tacita*; a tacit condition. *Bract.* fol. 19. *Tacita quædam habentur pro expressis*; some tacit things are regarded as expressed. *Branch's Pr. Tacitum vel expressum.* *Fleta*, lib. 3, c. 12, § 1.

TACIT RELOCATION. In Scotch law. An implied re-letting of premises, where the tenant continues in possession after the expiration of his term; a tacit renewal of the lease or tack. 1 *Forbes' Inst.* part 2, p. 153.

TACIT TACK. In Scotch law. An implied tack or lease; inferred from a

tacksman's possessing peaceably after his tack is expired. 1 *Forbes' Inst.* part 2, p. 153.

**TACK.** In Scotch law. A contract whereby the use of any thing is set or let for hire, or a reserved rent, called the *tack duty*, from and to a determined time. Termed also an *assedation*. 1 *Forbes' Inst.* part 2, p. 153. A lease.

**TACKSMAN.** In Scotch law. A tenant, or lessee; one to whom a *tack* is granted. 1 *Forbes' Inst.* part 2, p. 153.

**TACKING.** The uniting securities given at different times, so as to prevent any intermediate purchaser from claiming a title to redeem or otherwise discharge one lien, which is prior, without redeeming or discharging the other liens, also, which are subsequent to his own title. 1 *Story's Eq. Jur.* § 412. The term *tacking* in English law is particularly applied to mortgages, and is descriptive of the method by which a third mortgagee may obtain a priority over a second by buying in the first mortgage and uniting it to his own. See *Coote on Mortgages*, 391, *et seq.* 4 *Kent's Com.* 176. 1 *White's Eq. Cas.* 406, 410. The doctrine of *tacking* is not recognized in American law. 4 *Kent's Com.* 179. 1 *White's Eq. Cas.* 414, (Am. ed. note.)

**TACTIS SACROSANCTIS.** L. Lat. In old English law. Touching the holy (evangelists.) *Fleta*, lib. 3, c. 16, § 21. "A bishop may swear *visis evangeliiis* (looking at the Gospels) and not *tactis*, and it is good enough." Vaughan, C. J. *Freem.* 133.

**TACTIS SACROSANCTIS SCRIPTURIS.** Lat. In old European law. Touching the holy Scriptures. *Feud. Lib.* 2, tit. 2, pr. *Sacrosanctis evangeliiis tactis.* *Cod.* 3. 1. 14, § 1.

**TACTO PER SE SANCTO EVANGELIO.** L. Lat. Having personally touched the holy Gospel. *Cro. Eliz.* 105. The description of a corporal oath. See *Corporal oath*.

**TAIL.** L. Fr. and Eng. [from *tailler*, to cut; L. Lat. *tallium*, *talliatum*.] Limitation; abridgment; limited; abridged; reduced; curtailed, as a fee or estate in fee, to a certain order of succession, or to certain heirs. Literally, *cut off*, or *cut down* to certain limits. The word is used both as a substantive and adjective; as in the expressions, *tenant in tail*, *fee-tail*. See *Fee tail*.

**TAILE.** *Taille*. L. Fr. A tally. *Dyer*,

23, (Fr. ed.) Used also as an English word. *Cowell.* *Une taille de bois*; a tally of wood. *Id.* *Mist avant un taille enscale que avoit xvi noches*; produced a sealed tally which had sixteen notches. *Yearb.* T. Edw. II. 278. See *Tally*.

**TAILLE.** Fr. In old French law. An imposition levied by the king or any other lord, on his subjects. *Brande.* The royal *taille* was a tax imposed at once *in rem* and *in personam*; that is, each contributor was rendered personally liable to pay a sum proportionate to the estimated value of his immoveable property. It was a property tax affecting the roturier exclusively. *Steph. Lect.* 358.

**TAILLER, Tailer, Tayler.** L. Fr. In old English law. To cut; to limit; to tax; to bar. *Kelham.* *Yearb.* H. 9 Edw. III. 4. M. 10 Edw. III. 14.

To pronounce; to declare. *Kelham.*

**TAILZIE.** In Scotch law. An entail. A *tailzied fee* is that which the owner, by exercising his inherent right of disposing of his property, settles upon others than those to whom it would have descended by law. 1 *Forbes' Inst.* part 2, p. 101. *Bell's Dict.* See 3 *Bell's Appeal Cases*, 128.

**TAINI, Thaini.** L. Lat. In old English law. Freeholders. *Co. Litt.* 5 b.

**TAKE.** [Lat. *capere*; L. Fr. *prendre*.] To seize a thing or person by authority of law; to arrest a person. Constantly used in this sense, both in ancient and modern practice. See *Cape*, *Capias*.

To receive from another by some title; to be entitled to, as a party is said to *take* by descent, or by purchase, or under a will.

To obtain possession of a thing unlawfully, or feloniously; to appropriate to one's own use with a felonious intent. A felonious *taking* is of the essence of larceny. 4 *Bl. Com.* 230.

To lay hands upon an article, without removing it. There may be a *taking* without an *asportation*, or carrying away. See *Asportation*.

To receive the verdict of a jury; to superintend the delivery of a verdict; to hold a court. The commission of assise in England empowers the judges to *take the assises*, that is, according to its ancient meaning, to take the verdict of a peculiar species of jury called an *assise*; but in its present meaning, to *hold the assises*. 3 *Bl. Com.* 59, 185.

To obtain from a jury; as a counsel

is said to *take* a verdict for his client in court.

**TALARE.** L. Lat. [from Sax. *talán*, to pull off.] In old European law. To take or carry away. *L. Alaman.* tit. 34. *Taltum*; carried away. *Id. ibid.* *Talaverint.* *L. Ripuar.* tit. 64.

**TALE.** In old pleading. A plaintiff's count, declaration, or narrative of his case. 3 *Bl. Com.* 293. *Monstre son tale.* *Dyer*, 11 b.

**TALE.** The count or counting of money. Cowell derives this word from the same source with *tally*, (q. v.)

**TALEA, Talia.** L. Lat. In old English law. A tally. *Spelman.* *Cowell.* See *Tallia*.

**TALENT.** L. Fr. Right; truly. *Vous dites talent*; you say well or truly. *Yearb.* P. 4 Edw. III. 7.

**TALES.** Lat. Such; so many. A term applied to jurors. A *tales* is a supply of *such* men as are necessary to make up a deficiency of jurors. Such supplementary jurors are called *tales-men*, and are commonly taken from the bystanders or persons in court. 3 *Bl. Com.* 364, 365. A *tales* may be awarded if one only of the regular jurors appears; and it is said that, at common law, a jury might be composed entirely of *tales-men*. 10 *Co.* 102 a, 103 b. This is the law in Ohio. *Swan's Statutes of Ohio*, (ed. 1854,) c. 62, (17,) sect. 18. 15 *Ohio R.* 217.

**TALES DE CIRCUMSTANTIBUS.** L. Lat. So many of the bystanders. The emphatic words of the old writ awarded to the sheriff to make up a deficiency of jurors out of the persons present in court. 3 *Bl. Com.* 365.

**TALIARE, Talliare.** L. Lat. In old English law. To cut. *Si quis nemus alicujus sine licentia comburat vel taliat*; if any one shall burn or cut the wood of another without permission. *LL. Aluredi*, MS. c. 13, *apud Spelman.* See *Talliare*.

**TALIO.** Lat. [from *talis*, such, like.] In the civil law. Like for like; punishment in the same kind; the punishment of an injury by an act of the same kind, as an eye for an eye, a limb for a limb, &c. Called *similitudo supplicii*, (likeness of punishment;) *reciproca pœna*, (reciprocal punishment.) *Calv. Lex.* *Adam's Rom. Ant.* 291.

**TALIS.** Lat. In old English law. Such; such a one. A word constantly used by Bracton, Fleta, and other early

writers, in their illustrations. *Tali die, tali anno, et tali hora, venit idem B. cum tali et tali*; on such a day, in such a year, and at such an hour, came the said B. with such and such a one. *Fleta*, lib. 1, c. 31, § 6.

Used also in the sense of the expression, "as follows;" though translated "such" in the old books. "The form of the writ is *such*."

**Talis non est eadem, nam nullum simile est idem.** "Such" or "like" is not *the same*, for *Nullum simile est idem*, (q. v.) *Branch's Pr.* 4 *Co.* 18 b.

**TALITER.** Lat. [from *talis*, such.] In old pleading. In such a manner; so. *Taliter processum est*; it was proceeded in such a manner; such proceedings were had. Lord Ellenborough, 1 *M. & S.* 187. *Taliter processum fuit.* 2 *Mod.* 192, 195. See *Comb.* 125. 3 *Comstock's R.* 193.

**TALLAGE.** [L. Lat. *tallagium*, (q. v.) from Fr. *tailler*, to cut, or cut out.] In old English law. A share of a man's substance paid by way of tribute, toll or tax. *Cowell.* Lord Coke derives and defines this word as follows: "*Tallagium* or *tallagium* cometh of the Fr. word *tailer*, to share, [shear,] or cut out a part, and metaphorically is taken when the king or any other hath a *share* or part of the value of a man's goods or chattels, or a *share* or part of the annual revenue of his lands, or puts any charge or burthen upon another; so as *tallagium* is a general word and doth include all subsidies, taxes, tenths, fifteenths, impositions or other burthens or charge put or set upon any man, and so is expounded in our books." 2 *Inst.* 533. In the statute *De Tallagio non Concedendo*, the word is restrained to tallages, set or levied by the king or his heirs. *Id. ibid.*

According to *Spelman*, *tallages* were anciently called in English, *cuttings*, (the literal meaning of the word,) a term which, he observes, was used in Ireland in his day, to denote the exactions of a landlord.

**TALLAGIUM.** L. Lat. [from Fr. *tailer*, to cut.] In old English law. Tallage; tax; tribute; imposition. See *Tallage*. *Nullum tallagium vel auxilium, per nos vel hæredes nostros, in regno nostro ponatur seu levetur*, &c. No tallage or aid shall be set [imposed] or levied by us or our heirs, in our kingdom, &c. *Stat. de Tallagio non Concedendo*, c. 1.

The taking an inventory, or making a

list of property rated for paying tax. *Spelman*.

TALLATIO. L. Lat. In old records. A keeping account by tallies. *Cowell*.

TALLEA, *Tallia*, *Talea*, *Talia*. L. Lat. [L. Fr. *taille*, from *tailler*, to cut.] In old English law. A tally; a piece of wood cut with notches in two corresponding parts. *Si creditor habet tallean, oportet probare illam*; if the creditor have a tally, he ought to prove it. *MS. Codex*, cited in *Cowell*. *Ut patet per talliam*; as appears by a tally. *Paroch. Ant.* 571. See *Tallia*.

TALLIA. L. Lat. In old English law. A tally. *Fleta*, lib. 2, c. 27, § 5; c. 30; c. 61, § 2; c. 63, § 12. See *Tallea*.

TALLIA. L. Lat. [from Fr. *tailler*, to cut.] A tax or tribute; tallage; a share taken or cut out of any one's income or means. Called in Ireland, literally, a cutting. *Spelman*. The word *excise*, (from Lat. *excidere*, to cut out,) has precisely the same meaning.

TALLIARE, *Taliare*. L. Lat. [L. Fr. *tailler*; Ital. *tagliare*; from Sax. *talán*, or *tælan*, to take away, to correct, according to *Spelman*.] In old English law. To cut; to cut off; to cut out; to cut down; to reduce, abridge or limit by cutting; to limit or restrain.\* To set or put to some certainty, or to limit to some certain inheritance; (*ad quoddam certitudinem ponere, vel ad quoddam certum hæreditamentum limitare*.) *Litt.* sect. 18. *Co. Litt.* 22 a. *Feodum talliatum*; a fee tail. *Id.* See *Tail*.

To impose a tax or tallage. *Spelman*. *Fleta*, lib. 2, c. 47, § 34.

TALLIUM. L. Lat. [from L. Lat. *talliare*; Fr. *tailler*, to cut.] In old English law. Tail; a species of limited estate. See *Tail*.

A tally. *Spelman* See *Tally*.

A tax or tallage. *Spelman*.

TALLY. [L. Fr. *taille*, from *tailler*, to cut; L. Lat. *talea*, *talia*, *tallea*, *tallia*, *tallium*.] A piece of wood cut with indentures or notches in two corresponding parts, of which one was kept by the creditor, and the other by the debtor. *Cowell*. Formerly the common way of keeping all accounts. *Id.* *Fleta*, lib. 2, c. 70, § 11; c. 82, § 5. See *Tallia*. "If the tally have only notches or scotches indented, every scotch for twelve pence, according to the common usage." *Dyer*, 23.

*Spelman* more closely describes a tally

as "a small piece or slip of wood, made smooth on both sides, (*clavola vel ligni portiuncula, utrinque complanata*;) upon which the amount of a debt was cut, (*cui summa debiti inciditur*;) and being then split into two parts, one was delivered to the debtor and the other to the creditor, as an evidence of the account, (*fissaque inde in duas partes, una debitori, altera creditori traditur in rationis memoriam*.) *Spelman*, voc. *Tallium*. They were sometimes sealed. *Dyer*, 23.

In French law, tallies are described as "the parts of a piece of wood cut in two, which two persons use to denote the quantity of goods supplied by the one to the other. For this purpose, each of them has one of the pieces; that in possession of the debtor is properly called the tally, and the other the *echantillon*. When the goods are delivered, the two pieces are joined together, and a notch cut in them, denoting the quantity supplied; such are the tallies of bakers. These tallies are used instead of writings, and are a kind of written proof of the quantity supplied, when the buyer has the *echantillon* to join to the tally." *Poth. Oblig.* part 4, ch. 1, art. 2, § 8.

Tallies were used in the English Exchequer, until abolished by the statute 23 Geo. III. c. 82. The old tallies were ordered to be destroyed by 4 & 5 Will. IV. c. 15. *Wharton's Lex*.

TAM. Lat. So; as well. Frequently used with *quam*, in the expression *tam quam*, (q. v.)

TAM QUAM. Lat. (As well—as.) In practice. A phrase used where a proceeding is applied or referred to two things or persons. *Tam de fortia quam de facto*; as well of force as of fact. *Bract.* fol. 138. A *venire tam quam*, was one by which a jury was summoned, *as well* to try an issue, *as to* inquire of the damages on a default; (*tam ad triandum quam ad inquirendum*.) 2 *Tidd's Pr.* 722, 895. See *Qui tam*.

TAMEN. Lat. Yet; notwithstanding. *Tamen per cur'*. 1 *P. Wms.* 530.

TAMPS. L. Fr. Time. *Kelham*. An old form of *temps*.

TANGANARE. L. Lat. In old European law. To adjure; to call solemnly upon; to interrupt. *L. Salic.* tit. 60, § 1. *L. Ripuar.* tit. 35. *Id.* tit. 58, § 19.

TANISTRY. In Irish law. A species of tenure, founded on immemorial usage,

by which castles, manors, lands and tenements descended to the eldest and worthiest man of the blood and race of the deceased. *Davies' R.* 28. *Ware's Antiq. Hibern.* 38. *Cowell.*

**TANNERIA.** L. Lat. In old English law. Tannery; the trade or business of a tanner. *Fleta*, lib. 2, c. 52, § 35.

**TANT, Taunt.** L. Fr. As; so; as well. *Kelham.*

*Tant come*; inasmuch as; while; so long as. *Id.*

*Tant que, tanque, tange*; until. *Id.*

*Tant solement*; all only; (Lat. *solummodo, duntaxat.*) *Co. Litt.* 9 a.

**TANTEO.** Span. In Spanish law. Preëmption. *White's New Recop.* b. 2, tit. 2, c. 3.

**TANTOST.** L. Fr. Forthwith; presently; by and by; almost; so much. *Kelham.*

**TANTUS.** Lat. In old English law. So much. *Tantum terram cum pertinentiis*; so much land with the appurtenances. *Fleta*, lib. 3, c. 14, § 5.

**TANTUM.** Lat. In old English law. So much; as much. *Tantum bona valent, quantum vendi possunt.* Things are worth so much as they can be sold for. *Shep. Touch.* 142. *Perkins*, ch. 11, s. 809.

**TARD, Tarde.** L. Fr. [from Lat. *tarde*, q. v.] In old practice. Slow; late. *Purceo que le brefe vynt si tard que il ne poit faire nule execucion*; for that the writ came so late, that he could make no execution. *Britt.* c. 121. *Trop tarde*; too late. *Fet Assaver*, § 57. *Dyer*, 138.

**TARDE.** Lat. [from *tardus*, slow.] In practice. Late; too late. A return made by a sheriff, when a writ was delivered to him too late for execution, that the writ was delivered to him so late, (*quod breve adeo tardè sibi liberatum fuit*), or came so late, (*adeo tardè venit*), that it could not be executed, (*quod illud exequi non poterit*.) *Reg. Jud.* 31 b. *Roscoe's Real Act.* 150. *Breve tam tardè venit quòd exequi non potuit.* *Fleta*, lib. 2, c. 67, § 4. *Stat. Westm.* 2, c. 39. This return is still used. 7 *Penn. St.* (Barr's) *R.* 128.

**TASSARE.** L. Lat. In old English law. To stack; to heap up. *Tassari et co-operiri*; to be stacked and covered. *Fleta*, lib. 2, c. 73, § 9. See *Id.* cc. 81, 82.

**TASSUM, Tassa.** L. Lat. In old English law. A heap; a hay-mow, or hay-stack. *Fœnum in tassis*; hay in stacks. *Reg. Orig.* 96.

**TAUNT.** L. Fr. So; so much; so far. *Britt.* c. 69. *Taunt come*; so much as. *Id. ibid.* *Tauntost*; presently. *Id.* c. 96.

**TAUR.** L. Fr. [from Lat. *taurus*.] A bull. *Yearb.* H. 9 Edw. III. 6.

**TAVERN.** [from L. Fr. *taverne*, (q. v.) from Lat. *taberna*, (q. v.) a wine-shop.] A house licensed to sell liquors in small quantities, to be drunk on the spot. *Webster.* This seems to be the proper sense of the word. See *infra*.

In a larger sense,—an inn or hotel; a house for the entertainment of travellers, as well as for the sale of liquors, licensed for that purpose. *Webster.* In New-York, and several other states, the words *inn* and *tavern* are used as synonymous. 1 *N. Y. Rev. St.* [678—681,] 677—680. 3 *Hill's* (N. Y.) *R.* 150. 2 *Kent's Com.* 597, note.

\* \* That *tavern* originally signified, in England, a wine-shop or wine-house, a place where wine was sold in small quantities and drank, a drinking-house,—appears from the use of the Fr. *taverne*, and L. Lat. *taberna*, in the times of Britton and *Fleta*. See *Taverne, Taberna*. And this corresponds with the proper meaning of the Lat. *taberna*, from which it is undoubtedly derived, which was used to signify a wine-shop, (*œnopolium*, from Gr. οἰνοποιον,) and essentially imported a *shop* or place constructed of *boards*, (*ex tabulis constructa*), where any thing was sold. *Calv. Lex.* As, in process of time, however, the seller of wine, (including other strong drinks,) began to supply food and lodging for way-faring men, the term *tavern* came to be synonymous with *inn*, (q. v.)—and this has been traced as far back as the reign of Elizabeth. 1 *Cheeves' (S. C.) Law R.* 220. 2 *Kent's Com.* 597, note. The general disuse of the word "*inn*" in the United States, has necessarily led to the employment of "*tavern*" in its place, though without much uniformity or strictness of signification. Thus, in the Revised Statutes of New-York, *tavern* is used in the sense of a house where liquors are retailed and drunk, and requiring a license as such. 1 *Rev. St.* [678—681,] 677—680. In the laws of Pennsylvania and Ohio, it is employed in the same sense. *Purdon's Dig.* (ed. 1857,) 428, pl. 2. *Swan's Statutes of Ohio*, (1854,) chap. 112, (21,) sect. 1. 2 *Kent's Com.* 597, note. In other states, the term has been applied to houses where liquor is not retailed. Thus, in Kentucky, taverns must be licensed, even though spiritous liquors

be not retailed. *Revised Statutes*, (ed. 1852,) 665, § 2. And see *Swan's Statutes of Ohio*, c. 112, (19.) And, in New-York, by Act of 12th April, 1843, c. 97, licenses to keep *taverns* may be granted *without* including a license to sell spiritous liquors or wine. So that the word has, by a process of gradual departure from its original and proper meaning, come at last to import the very reverse of it.

**TAVERNE.** Fr. [from Lat. *taberna*, q. v.] In old English law. A house or shop where wine was sold and drunk; a wine-shop or wine-house; a drinking-house; a tippling-house; a tavern. *Et si per felonie, le quel la felonie fuit faite, dedens meson ou dehors, ou en taverne, ou à la lute, ou à autre assemble*; and if feloniously [slain, the coroner shall cause inquest to be made] in what place the felony was committed, within a house, or without, or in a *tavern*, or at a wrestling-match, or other gathering. *Britt. c. 1. Que ils le counterent pur verite à la taverne, ou ail-lourz de aucun ribaud ou autre, à que home ne doit rien crere*; that they heard it mentioned for truth at a *tavern*, or elsewhere, from some vagabond or other, to whom no credence should be given. *Id. c. 4.* See *Taverner*. The word *taverne* is not found in Kelham's Dictionary.

**TAVERNER.** L. Fr. and Eng. [Fr. *tavernier*, from *taverne*, q. v.] In old English law. A seller of wine; one who kept a house or shop for the sale of wine. *Et puis soit enquis de taverners que ount vendu vyns encontre la droit assise*; and afterwards it shall be inquired of *taverners* who have sold wines against the right assise. *Britt. c. 30.* A retailer of wines. *Hardr. 338.* *Taverner* is used as the addition of a person in a writ in the Register. *Reg. Orig. 195.* But *tavern-keeper* has now, for the most part, taken its place.

**TAVERN-KEEPER.** [Fr. *taverner*, q. v.] One who keeps a tavern. *Webster*.

One who keeps an inn; an inn-keeper. In New-York and several of the other states, the terms *tavern-keeper* and *inn-keeper*, or *inn-holder*, are used as synonymous. 1 *N. Y. Rev. St.* [678,—681,] 677—680. 2 *Kent's Com.* 97, note. See *Tavern*. *Webster* defines the word, as used in the United States, to mean, "one who is licensed to sell liquors to be drank in his house, and to entertain travellers and lodgers, together with the horses or oxen composing their teams."

**TAX.** [L. Fr. *taxe*; L. Lat. *taxa*, from Gr. *τάξις*, from *τάσσειν*, to set in order, to arrange or adjust.] A rate or sum of money assessed on the person or property of a citizen, by government, for the use of the nation or state. *Webster*.

In a general sense,—any contribution imposed by government upon individuals, for the use and service of the state; whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. *Story on the Const. (Abr.)* § 472. See 1 *Kent's Com.* 254—257.

In a stricter sense,—a rate or sum imposed by government upon individuals, (or polls,) lands, houses, horses, cattle, possessions and occupations; as distinguished from customs, duties, imposts and excises. *Id. Webster*. This is the ordinary sense of the word. In New-York, the term *tax* has been held not to include a street assessment. 11 *Johns. R.* 77. 3 *Wendell's R.* 263. 4 *Hill's R.* 76. 4 *Comstock's R.* 419.

Literally, or according to its derivation,—an imposition laid by government upon individuals, according to a certain order and proportion, (*tributum certo ordine constitutum*.) *Spelman*, voc. *Taxa*. *Webster* observes, that taxes in free governments are usually laid upon the property of citizens, according to their income or the value of their estates. Cowell says it may be so called from the Gr. *τάξις*, because it was a thing done *orderly* and moderately. The radical idea of the word seems to be, arrangement, adaptation or adjustment of one thing to another. See *To tax*, *Taxare*. It imports, also, essentially, according to Cowell, *regularity* of imposition and *certainity* of amount, as distinguished from occasional, extraordinary or uncertain impositions, such as subsidies were. And, according to *Spelman*, it imports, also, *moderation* in amount, (*non solum ordinem, sed et modum ratione temperatum significat*.)

For the distinction between a tax and an assessment, see *Assessment*.

To **TAX.** [from L. Lat. *taxare*, (q. v.) L. Fr. *taxer*; see *Tax*.] To lay, impose or assess upon the citizens [or subjects of a government] a certain sum of money, or amount of property, to be paid to the public treasury, to defray the expenses of the government. *Webster*.

In practice. To assess, fix or determine judicially; to adjust, adapt or proportion.

This is the original and proper sense of the word, retained in the common phrase "to *tax* costs," but much more expressively shown in the old, but now obsolete phrase, "to *tax* damages." 2 *Leon.* 199. Where a clerk, master or judge examines an attorney's or solicitor's bill of costs, and certifies it to be of the proper amount, he is said to "*tax* the costs." But anciently a jury were said "to *tax* the damages," when they gave them in their verdict, implying, according to the strict radical meaning of the word, an *adjustment* or *adaptation* of the damages to the injury sustained. *Bract.* fol. 187, 98 b. *Britt.* c. 53, 87. *Fleta*, lib. 2, c. 1, § 24. See *Taxare*, *Taratio*, *Tuxer*. *Assess* is the word substituted, in the latter application, in modern practice, the *damages* being said to be *assessed*, and the *costs* *taxed*. But *assess* itself imports radically the same idea of *adjustment*, (*assidere*, its Latin form, being compounded of *ad*, to or by, and *sedere* or *sidere*, to set or place.)

In the New-York Code of Procedure the terms *adjust* and *adjustment* have been substituted in place of *tax* and *taxation*, in their application to costs. *Code*, (ed. 1859,) § 311.

**TAXA.** L. Lat. A tax. *Spelman*.

In old records. An allotted piece of work; a task. *Ad taxam operarius*; a workman by the piece; a tasker. *Cowell*. *Triturator ad taxam*; a thresher in the barn, who worked by the measure, or job, and not by the day. *Paroch. Ant.* 576.

**TAXACION.** L. Fr. [from Lat. *taxatio*, q. v.] In old English law. Taxation; assessment; the finding of damages by a jury. *Soit agarde que ele recovere seisine de sa dower, et ses damages par taxacion de jurors*; it shall be awarded that she recover seisin of her dower, and her damages by the taxation of the jurors. *Britt.* c. 111.

**TAXARE.** Lat. In the civil law. To rate or value. *Calv. Lex*.

To tax; to lay a tax or tribute. *Spelman*.

In old English practice. To assess; to rate or estimate; to moderate or regulate an assessment or rate. *Item damna dabit per sacramentum juratorum estimanda, et per justitiosarios (si opus fuerit) taxanda ad minorem quantitatem, si juratores forte modum excesserint; ad plus autem æstimari non debent à justitiariis quam juratores dixerint in sacramento, nisi forte juratores illa damna ex certa scientia ad minus taxaverunt quam deceret*; also he shall

pay the damages, to be estimated by the oath of the jurors, and to be *taxed* by the justices (if need be) at a less amount, if the jurors should happen to have exceeded measure; but they ought not to be estimated by the justices at more than the jurors have said in their verdict, unless perchance the jurors have intentionally *taxed* those damages at less than was proper. *Bract.* fol. 187. See *Fleta*, lib. 2, c. 60, § 36; c. 62, § 4. *Dampna quæ taxantur per juratos ad duas marcas*; the damages which are taxed by the jurors at two marks. *Pasch.* 14 *Edw.* I. rot. 10, coram Rege.

**TAXATI.** L. Lat. [from Gr. *τάξις*, order.] In old European law. Soldiers of a garrison or fleet, assigned to a certain station. *Spelman*.

**TAXATIO.** Lat. [from *taxare*, to rate or adjust.] In the civil law. The assessment or moderation by a judge, (*judez*), of the damages claimed or sworn to by the actor or plaintiff; the limiting of the damages to a certain amount. *Officio judicis debet—taxatione jusjurandum refrænari.* *Dig.* 4. 3. 18. 1 *Spence's Chancery*, 211, note (c.) In the Novels of Justinian, it is used for a rated sum limited by a judge, (*δηρῆς ποσότητος ὁρισμένης παρὰ τοῦ δικάζοντος.*) *Nov.* 53, c. 1. *Nov.* 82, c. 10.

Bracton, in his commentary on the civil law definition of an action, (which he adopts,) uses the words *taxatio* and *taxare*, in a similar sense. *Bract.* fol. 98 b.

**TAXATIO EXPENSARUM.** L. Lat. In old English practice. Taxation of costs. *Clerke's Prax. Cur. Adm.* tit. 9.

**TAXATIO NORWICENSIS.** L. Lat. A valuation of ecclesiastical benefices made through every diocese in England, by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III. *Cowell*,

**TAXATION.** [Lat. *taxatio*.] The act or process of taxing, or of imposing a tax. The act or process by which a government imposes upon individuals the payment of a rateable contribution in money, for public uses. See *Tax*. For the distinction between *taxation* and *assessment*, see *Assessment*.

**TAXATION.** L. Fr. and Eng. In practice. Assessment; adjustment. *La taxation des damages.* *Yearb.* M. 5 *Edw.* III. 24. The act of taxing. See *To tax*.

**TAXER.** L. Fr. In old English law. To tax; to assess; to rate or estimate. *Taxe, taxes*; taxed; assessed; rated. *Et solonc la value annuele soyent taxes les damages par les justices, singles ou doubles,*

&c.: and according to the annual value shall the damages be taxed by the justices, single or double, &c. *Britt. c. 53. Et puis soient taxes leur damages par les jurours*; and afterwards shall their damages be taxed by the jurors. *Id. c. 87. Que le plaignif recov'a sa debt et ses damages taxes*; that the plaintiff recover his debt and his damages taxed. *Yearb. P. 10 Edw. III. 21.*

TEAM, *Theam, Tem, Them, Sax.* [from *tuman*, to propagate, to teem.] In old English law. Literally, an offspring, race or generation. *Spelman.* A royalty or privilege granted by royal charter to a lord of a manor, of having, keeping and judging in his court, his bondmen, neifes and vileins, and their offspring or suit, (*sequela.*) *Id.* They who had a jurisdiction of this kind, were said to have a court of *Theme*. *MS. Anon. cited ibid.* The word is constantly used in the old books in connection with *toll*, in the expression *Toll & Team*. *Bract. fol. 122 b, 124 b, 154 b.*

TECHNICAL. [Græco-Lat. *technicus*; Gr. *τεχνικός*, from *τέχνη*, art.] Belonging, or peculiar to an art or profession. Technical terms are frequently called in the books, "words of art," (*verba or vocabula artis.*)

TEDDING. Spreading. Tedding grass is spreading it out after it is cut in the swarth. 10 *East*, 5.

TEDING-PENNY. *Tething-penny.* Sax. In old English law. A small tax or allowance to the sheriff from each tithing of his county, towards the charge of keeping courts, &c. *Cowell.*

TEGULA. [Lat. from *tegere*, to cover.] In the civil law. A tile. *Dig. 19. 1. 18.*

TEINDS. In Scotch law. Tithes. 1 *Forbes' Inst. part 2, p. 89. Bell's Dict.*

TEINLAND, *Tainland, Thainland.* Sax. In old English law. Land of a thane or Saxon noble; land granted by the crown to a thane or lord. *Cowell. 1 Reeves' Hist. Eng. Law, 5.* Hereditary land, not subject to the service of agricultural tenants, (*terra hæreditaria, et colonorum servituti non obnoxia.*) *Spelman.*—Land held by knight-service. *Co. Litt. 86 a.*

TEKNA, *Τέκνα.* Gr. [plur. of *τέκνον*, from *τέκτειν*, to bring forth.] In the civil law. Children. A word answering to the Lat. *nati*, in its legal as well as common import. *Calv. Lex. Connanus, cited ibid.*

<sup>Ἡ τῶν τέκνων προσηγορία καὶ ἐπὶ τοῦ ἐγγόνου ἐκτείνεται:</sup> the term *τέκνα* (children) is extended also to grandchildren. *Dig. 50. 16. 104.*

TEAEYTH, *Τελευτή.* Gr. In the civil law. Death; (the end of life.) *Nov. 39, pr.*

TEAEYTAIA BOYAHΣIΣ. Gr. In the civil law. Last will, (*ultima voluntas.*) *Dig. 48. 22. 16.*

TEAEYTΩN, *Τελευτών.* Gr. In the civil law. Dying; a person dying or deceasing. *Nov. 48. Nov. 90.* The origin of the modern word *decedent*, (q. v.)

TELLIGRAPHIUM, *Telligraphum, Telligraphium.* Latino-Gr. [from Lat. *tellus*, land, and Gr. *γράφειν*, to write.] In Saxon law. A charter or deed of land, (*charta seu libellus prædialis.*) *Spelman. 1 Reeves' Hist. Eng. Law, 10.* A writing showing and protecting the title to lands, (*scriptum quo prædiorum jus continetur et tuetur.*) *Spelman.* Literally, a land-writing. *Telligraphia* were evidences or muniments of title. *Id. Tandem Cenulphus Rex, serâ ductus pœnitentiâ, telligraphia, id est, libellos quos a supradictis hominibus Uriheh et Osberto injustè perceperat, cum magnâ pecuniâ Ecclesiæ Christi in Dorobernia remisit*; at last king Kenulf, led by late repentance, restored the land-writings, that is, the books [*bocs*, Sax. land-*bocs*,] which he had unjustly taken from the aforesaid men, Uriheh and Osbert, with a large sum of money, to the Church of Christ in Canterbury. *MS. Concil. apud Clovesho, A. D. 800. Spelman.* Mr. Reeves observes that the word *telligraphum* was probably adopted after the Conquest, as a translation of the Saxon *land-boc*. 1 *Reeves' Hist. ub. sup.* This supposition seems to be reduced to certainty, by the above quotation.

TELONIUM, *Teloneum.* Græco-Lat. [Gr. *τελώνιον*, from *τέλλω*, tax.] In the civil law. A place where tax is collected or received. *Calv. Lex.* In old English records, a toll-booth. *Cowell.* Converted into *theolonium*, in old English law, and used to signify a tax or toll. See *Theolonium*.

In feudal law. A tax, (*vectigal.*) *Vectigalia quæ vulgo dicuntur telonia.* *Feud. Lib. 2, tit. 56.*

TELUM. Lat. [from Gr. *τῆλε*, or *τηλοῦ*, far off.] In the civil law. A weapon. Any thing that a man can hurt with. *Telorum appellatione, omnia ex quibus singuli homines nocere possunt, accipiuntur*; under the appellation of weapons are included all things with which individual men can hurt. *Dig. 48. 6. 11. 1.* This definition is copied in *Fleta. Lib. 4, c. 4, § 4.* The *Lex Cornelia de Sicariis*, punished with

death those who went about with a weapon, (*cum telo*), with the intent of killing some one. Justinian, commenting on the meaning of *telum*, in this law, observes, that "according to Caius' interpretation of the Twelve Tables, it commonly signified that which was shot from a bow, [viz. an arrow,] but it now signifies every thing that is thrown from the hand, [any missile weapon,] so that missiles of wood, stone and iron are embraced under the appellation." *Inst.* 4. 18. 5. See *Dig.* 48. 8. *Teli appellatione et ferrum et fustis, et lapis, et denique omne quod, nocendi causâ, habetur, significatur.* *Dig.* 47. 2. 54. 2. See *Arma.*

TEM. Sax. An old form of *team*, (q. v.) Toll & tem. *Bract.* fol. 104 b.

TEMERE. Lat. In the civil law. Rashly; inconsiderately; without sufficient cause. A plaintiff was said *temere litigare*, who demanded a thing out of malice, or sued without just cause, and who could show no ground or cause of action. *Brissonius.*

TEMPLES. The two English inns of court, (the Inner Temple and Middle Temple,) so called, because anciently occupied as the residence of the Knights Templars, on the suppression of which order they were purchased by some professors of the common law, and converted into *hospitia*, or Inns of Court. They are called the *Inner* and *Middle Temple*, in relation to Essex House, which was also a part of the house of the Templars, and called the *Outer Temple*, because situated without Temple Bar. *Encyc. Lond.*

TEMPORALIS. Lat. [from *tempus*, time.] In the civil law. Temporary; limited to a certain time; not perpetual.

*Temporalis actio*; an action limited within a certain period, beyond which it could not be brought. *Inst.* 4. 12.

*Temporalis exceptio*; a temporary exception; an exception which barred or delayed an action for a time. Otherwise called *dilatoria*. *Inst.* 4. 13. 8, 10.

TEMPORALITIES. [L. Lat. *temporalia*.] In English law. The lay-fees of bishops, with which their churches are endowed or permitted to be endowed by the liberality of the sovereign, and in virtue of which they become barons and lords of parliament. *Spelman*, voc. *Temporalia*.

TEMPORIS EXCEPTIO. Lat. In the civil law. A plea of time; a plea of lapse of time, in bar of an action. 1 *Mack. Civ. Law*, 200, § 200. Answering to the

plea of the statute of limitations at common law.

TEMPS. L. Fr. In old English law. Time; times. *Temps descouverables*; non-judicial seasons. *Britt.* c. 52. *Par temps*; presently; shortly. *Kelham*.

TEMPTATIO, *Tentatio*. L. Lat. [from *tentare*, to try.] In old English law. Assay or trial. *Temptatio panis fiat bis in anno*; the assay of bread shall be made twice a year. *Cart.* 20 *Edw.* I. n. 51. *Cowell*.

TEMPUS. Lat. In civil and old English law. Time; a time or term; a limited period of time. See *infra*. *Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores*; time is a means of removing obligations and actions; because time runs against the slothful and those who are neglectful of their right. *Fleta*, lib. 4, c. 5, § 12.

TEMPUS CONTINUUM. Lat. In the civil law. A continuous or absolute period of time. A term which begins to run from a certain event, even though he for whom it runs has no knowledge of the event, and in which, when it has once begun to run, all the days are reckoned as they follow one another in the calendar. *Dig.* 3. 2. 8. 1 *Mack. Civ. Law*, 180, § 187.

TEMPUS SEMESTE. Lat. In old English law. The period of six months or half a year, consisting of one hundred and eighty-two days. *Reg. Jud.* 50 b. 6 *Co.* 62 a. *Yelv.* 100. *Cro. Jac.* 166.

TEMPUS UTILE. Lat. In the civil law. A profitable or advantageous period of time. A term which begins to run from a certain event, only when he for whom it runs has obtained a knowledge of the event; and in which, when it has once begun to run, those days are not reckoned on which one has no *experiundi potestas*, i. e. on which one cannot prosecute his rights before a court. *Dig.* 3. 6. 6. 1 *Mack. Civ. Law*, 180, § 187.

TENANCY. [L. Fr. *tenaunce*; L. Lat. *tenentia*.] A holding or mode of holding an estate.

In old English law. A house of habitation, or place to live in, held of another. *Stat.* 23 *Eliz.* c. 4. *Cowell*.

TENANCY IN COMMON. The holding of an estate in lands by several persons, by several and distinct titles, but by unity of possession.\* 2 *Bl. Com.* 191. 4 *Kent's Com.* 367. A tenancy in common is where

two or more hold the same land, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 *Steph. Com.* 323.

The holding of a personal chattel, as of a ship or vessel, by several persons at the same time, with distinct but undivided interests. See 3 *Kent's Com.* 151.

TENANT. L. Fr. and Eng. [L. Fr. *tenant*, from *tener*, to hold; L. Lat. *tenens*, from *tenere*, to hold.] One who holds; a holder, especially of lands or tenements.

In feudal law. One who holds of another, (called lord or superior,) by some service, as fealty or rent. See *Tenure*.

In English law. One who holds of another, (according to the fiction or maxim of tenure,) though, in point of fact, the absolute owner of what he so holds; as a tenant in fee simple.\* 2 *Bl. Com.* 59, 104, 105. 3 *Kent's Com.* 487.

One who actually holds of another; one who has temporary possession and use of that which is in reality the property of another; as a tenant for life or years. The correlative of *landlord*.

One who has actual seisin or possession of lands or tenements. *Co. Litt.* 1 b.

One who has actual possession of lands claimed in suit by another; the defendant in a real action. The correlative of *demandant*. 3 *Bl. Com.* 180.

One who holds or possesses lands or tenements by any kind of right, either in fee, for life, years or at will. *Cowell*. This definition sufficiently expresses the general meaning of the word, as at present used both in English and American law.

\* \* Lord Coke, commenting on the word *tenant* as used by Littleton, observes that it has all the significations of the Lat. *teneo*, from which it is derived. For the tenant *has* [*tenet*] the estate of the land; he *holds* [*tenet*] the land of some superior lord; he is to *perform* [*tenere*] the services due; and thereunto he is *bounden*, [*tenetur*] by doom and judgment of law. *Co. Litt.* 1 b. *Litt.* sect. 1. See *Teneo*, *Tenere*.

The word *tenant* continues to be extensively employed in American law, although the principle of *tenure*, in the feudal sense, from which it is derived, and which it radically imports, is no longer recognized. See 3 *Kent's Com.* 488, 513, 514. Its principal use now is to distinguish the degree or quantity of right or interest which persons

may have in lands or other subjects of property, as whether in fee, for years, &c. whether in severalty, or in common, &c. As applied to estates in fee simple, it signifies *owner* or *proprietor*; as applied to less estates, it signifies *holder*, *occupier*, or *possessor*. In the latter application, however, particularly in regard to estates for years, the word continues to retain in a degree its ancient and peculiar sense of a holding of *another by service*; and though the service is now a stipulated *rent* paid as a mere equivalent for the occupation, the proprietor is still known, even in common speech, by the feudal appellation of *land lord*.

TENANT IN CAPITE. L. Fr. and Lat. In feudal and old English law. Tenant in chief; one who held immediately under the king, in right of his crown and dignity. 2 *Bl. Com.* 60.

TENANT IN FEE SIMPLE, (or TENANT IN FEE.) He who has lands, tenements or hereditaments, to hold to him and his heirs forever, generally, absolutely and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law. 2 *Bl. Com.* 104. *Litt.* sect. 1. 2 *Crabb's Real Prop.* 6, § 948. See *Fee simple*.

TENANT IN TAIL. In English law. He who has lands, tenements or hereditaments, to hold to him and the heirs of his body.\* *Litt.* sect. 14. 2 *Bl. Com.* 113. 2 *Crabb's Real Prop.* 23, §§ 971, 972. See *Fee tail*.

TENANT FOR LIFE. One who holds lands or tenements for the term of his own life, or for that of any other person, (in which case he is called tenant *pur autre vie*,) or for more lives than one. 2 *Bl. Com.* 120. See *Estate for life*.

TENANT IN DOWER. A woman who holds the third part of the lands and tenements of which her deceased husband was seised, for the term of her life, as her dower.\* 2 *Bl. Com.* 129. See *Estate in dower*.

TENANT BY THE CURTESY. One who, on the death of his wife seised of an estate of inheritance, after having by her issue born alive and capable of inheriting her estate, holds the lands and tenements for the term of his life. After the birth of the issue and before the death of the wife, he is called tenant by the curtesy *initiate*; after the death of the wife, tenant by the curtesy *consummate*. *Co. Litt.* 30 a. See *Estate by the curtesy*.

**TENANT FOR YEARS.** One who holds lands or tenements under a lease or demise from another, for the term of a certain number of years agreed upon; a lessee for years.\* 2 *Bl. Com.* 140. See *Estate for years*.

**TENANT FROM YEAR TO YEAR.** One who holds lands or tenements under the demise of another, where no certain term has been mentioned, but an annual rent has been reserved. See 1 *Steph. Com.* 271. 4 *Kent's Com.* 111, 114.

One who holds over, by consent given either expressly or constructively, after the determination of a lease for years. *Id.* 112.

**TENANT AT WILL.** One who holds lands or tenements let to him by another, at the will of the lessor.\* *Litt.* sect. 68. 2 *Bl. Com.* 145. 4 *Kent's Com.* 110. See *Estate at will*.

**TENANT BY (or AT) SUFFERANCE.** One that comes into the possession of land by lawful title, but holds over by wrong, after the determination of his interest. 4 *Kent's Com.* 116. 2 *Bl. Com.* 150. *Co. Litt.* 57 b. See *Estate at sufferance*.

**TENANT A VOLUNTE.** L. Fr. Tenant at will. *Litt.* sect. 68.

**TENANT PERAVALLE, (or PARAVAIL.)** L. Fr. The lowest tenant, (literally, the under or bottom tenant,) of land, one who held of a mesne lord.\* *Litt.* sect. 555. See *Paravail*.

**TENAUNT.** L. Fr. [from *tener*, to hold.] In old English law. Tenant; a tenant. *Pur ceo que le pleintyfe est son tenaunt, et del tenement que il tient de luy est arere*; for that the plaintiff is his tenant, and of the tenement which he holds of him is in arrear. *Britt.* c. 27.

The defendant in a real action. *Si le gavaunt veigne al jour que il serra somouns, et le pleyntyfe ausi, et le tenaunt nent*; if the warrantor come at the day that he shall be summoned, and the plaintiff also, and the tenant not. *Britt.* c. 75.

**TENCON.** L. Fr. A dispute; a quarrel. *Kelham*.

**TEND.** In old English law. To tender or offer. *Cowell*.

**TO TENDER.** L. Fr. and Eng. [L. Fr. *tendre*, (q. v.) from Lat. *tendere*, to stretch or hold out, to extend.] To offer, by presenting a thing, and as it were holding it out to another; to offer to pay an amount of money, by presenting it to another. See *Tender*.—To carefully offer, or circum-

spectly endeavor the performance of any thing belonging to us. *Cowell*. See *Tendre*.

To offer in words, or by a form of words. See *Tender of issue*.

**TENDER.** An offer of a sum of money in satisfaction of a debt or claim, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it.\* A mere offer to pay is not, in legal strictness, a tender. 2 *Dall.* 190. Marshall, arg. 1 *Wash. (Va.) R.* [348,] 450. The word imports not only a verbal offer, but a corresponding corporeal act, as by producing and showing the amount; and this is strictly sustained by its etymology, the Lat. *tendere*, from which it is derived, signifying to stretch or hold out, to extend; implying that what is tendered is held out to the party for his acceptance; the party tendering thus representing, both by word and act, not only his willingness, but his readiness, to do all in his power to satisfy the demand. As to the kind of money in which a tender should be made, and generally what is a good tender, see 3 *Chitt. Bl. Com.* 304, note. *United States Digest*, Tender.

To constitute a valid legal tender there must be an actual offer of the sum due, unless the actual production of the money be dispensed with by a refusal to accept, or something equivalent thereto; and this offer must be an absolute one, not coupled with any condition. 2 *Stark. Evid.* 778, 779. 15 *Wendell's R.* 637; cited by Crawford, J. 1 *Wisconsin R.* 141, 147. A declaration of willingness and readiness to pay is not a legal tender of payment. *Id.*

**TENDER OF ISSUE.** A form of words in a pleading, by which a party offers to refer the question raised upon it to the appropriate mode of decision. The common tender of an issue of fact by a defendant, is expressed by the words, "And of this he puts himself upon the country." *Steph. Pl.* 54, 230.

**TENDRE, Tender.** L. Fr. [from Lat. *tendere*, to reach, to offer.] In old English law. To offer; to tender; to express a readiness. *Si ascun pl'—monstre chartres, et tendent averement*; if any plaintiff—show charters, and offer proof. *Britt.* c. 76. *Et si le breve soit covenable et bon, si coviendra au pleyntyfe tendre d'averer toute sa entente*; and if the writ be regular

and good, it behooves the plaintiff to offer to aver or prove [to express himself ready to verify] all his count. *Id.* c. 98. Littleton uses this word in its present English form. *Al jour assesse, de tender à luy*; at the day set, to tender to him. *Litt.* sect. 340.

**TENEMENT.** L. Fr. and Eng. [from Fr. *tener*, to hold; L. Lat. *tenementum*, from *tenere*, to hold.] A thing holden. 2 *Bl. Com.* 59.—“A possession holden.” *Finch's Law*, b. 2, ch. 4.—Any thing that may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial ideal kind. 2 *Bl. Com.* 17. See 3 *Kent's Com.* 401. 17 *Pick. R.* 105. *Tenement* is a word of greater extent than *land*, including not only land, but rents, commons and several other rights and interests issuing out of, or concerning land. 1 *Steph. Com.* 158, 159. A tenement must lie in tenure and must relate to land. *Burr. Sett. Cas.* 318.

In the popular sense, a house or building. 2 *Bl. Com.* 16, 17. A building for a habitation. *Webster*. A house with the home-stall, or immediate appurtenances. *Brande*. Sometimes construed in law to have this sense. See 10 *Wheaton's R.* 236, Story, J. 17 *Pick. R.* 105, Wilde, J. 2 *East*, 189. 4 *Id.* 362. And see *Tenementum*.

This word is purely French, and in composition is expressed by the English *hold*. Thus, frank-tenement is translated free-hold. See *Hold*.

**TENEMENT.** L. Fr. [from *tener*, to hold.] Tenement; a tenement; land held of another by service. *Del tenement que il tient de luy*; of the tenement which he holds of him. *Britt.* c. 27. *Chateux que demorent en le tenement*; chattels which remain on the tenement. *Id.* c. 40. *Trova le tenement pleyne*; finds the tenement full. *Id. ibid.* *Fraunk tenement*; freehold. *Id. ibid.* *Id.* c. 47, et passim.

“TENEMENTS,” in a will, in its ordinary sense, imports a mere local description of the property; but it sometimes carries a fee, as where the context, or apparent intention of the testator, requires such a construction. See 10 *Wheaton's R.* 236, Story, J. “The word ‘tenements’ has never been construed in a will, independently of other circumstances, to pass a fee.” *Id.* 238.

**TENEMENTARY** (or **TENEMENT-**

**AL**) **LAND.** [L. Lat. *terra tenementalis*.] In English law. That part of a manor which is granted out to tenants, as distinguished from the demesne lands of the lord; the tenant's land or tenancy. Called, in Saxon law, the *outland*. *Cowell. Spelman*, vocc. *Inland, Utland*. 2 *Bl. Com.* 90.

**TENEMENTUM.** L. Lat. [from *tenere*, to hold.] In old English law. A tenement; a thing held by service; a fee, fief or feudal estate; an estate which a tenant holds of a lord. *Spelman. Devenio homo vester, de tenemento quod de vobis teneo*; I become your man, of the tenement which I hold of you. *Bract.* fol. 80. *Liberum tenementum*; a free tenement, or freehold, as distinguished from *villenagium*. *Id.* fol. 207. *Tenementorum, aliud liberum, aliud villenagium*; of tenements, one kind is free, the other villeinage. *Id. ibid.*

A corporeal thing held of another; a thing capable of being viewed, entered upon, measured, cultivated, fed upon. Hence, primarily, *land* held by service. *Intrat dominus in tenementum tenentis sui, et facit ei disseysinam*; the lord enters into the tenement of his tenant, and disseises him. *Bract.* fol. 46 b. *Videant tenementum ad quod communia pertinere dicitur. Tenementum videlicet in quo communia pasturæ petitur, qualitatem et quantitatem, et per quas metas*; they should view the tenement to which the common of pasture is said to be appurtenant. The tenement, too, in which the common is demanded, its quality and quantity, and by what metes [it is bounded.] *Id.* fol. 224. *Plures habere possunt jus pascendi in uno tenemento*; several may have a right of pasture in one tenement. *Id. ibid.* *Nemo possit communiam petere in aliquo tenemento quod excoli possit, vel includi, vel poni in defensum*; no one can claim common in any tenement which can be cultivated, or enclosed, or put in defence, [i. e. exclusively appropriated.] *Id.* fol. 228.

Tenure; the mode or circumstance of holding. *Tenementum non mutat statum liberi, non magis quam servi. Poterit enim liber homo tenere purum villenagium, faciendo quicquid ad villenagium pertinebit, et nihilominus liber erit, cum hoc faciat ratione villenagii, et non ratione personæ suæ*; the tenure [or mode of holding,] does not alter the condition of a freeman, any more than of a slave. For a freeman may hold pure villeinage, doing whatever

shall pertain to villeinage, and nevertheless be a freeman, since he does this in regard of the villeinage, and not in regard of his own person. *Bract.* fol. 26.

A tenement; a building for habitation or occupation; a messuage, house or shop. There is a writ in the Register, *De tenementis legatis*, (about tenements bequeathed.) One form of this writ, directed to the mayor and sheriffs of London, recites that, "whereas, according to custom in the said city hitherto used and approved, it is lawful for every citizen of the said city to bequeath his *tenements* in the said city, by his last will and testament, to whomsoever he pleases, in the same way as his chattels, (*licet unicuique civi ejusdem civitatis tenementa sua in eadem civitate, in testamento suo in ultima voluntate sua, tanquam catalla sua legare cuicunque voluerit*;) and that one S. late a citizen of the said city, had in his last will and testament bequeathed four *shops*, with the appurtenances, (*quatuor shopas cum pertinentiis*;) or four *messuages* and ten *shops*, (*quatuor mesuagia et decem shopas*;) with the appurtenances, &c. to E." *Reg. Orig.* 244 b. Another writ, directed to the bailiffs of Great Yarmouth, recites a similar custom of the burghesses of that town, and applies it to a *messuage* bequeathed by will, &c. *Id. ibid.*

A chattel; a thing bought and held by a villein. *Et quod tenementum contineri possit sub generalitate catallorum, quantam ad dominum, videtur, quia ex catallis illorum servorum, (quæ dominorum esse debent,) emptæ sunt tenementa*; and it seems, that as far as concerns the lord, a *tenement* may be embraced under the general designation of *chattels*; because, with the chattels of those bondmen, (which ought to be their lords') *tenements* are bought. *Bract.* fol. 26.

A manor. *Spelman.*

**TENENDAS.** In Scotch conveyancing. That clause of a charter by which the particular tenure is expressed. *Bell's Dict.*

**TENENDUM.** L. Lat. [from *tenere*, to hold; L. Fr. *à tener*.] In old conveyancing. To hold; literally, to be held. A formal word in charters, by which a *tenement* was conveyed, expressive of *tenure*, or indicating that the thing conveyed was *to be held*, in the feudal sense of the term. It was constantly and closely associated with the word *habendum*, as in the follow-

ing examples: *Do tali, &c. habendum et tenendum sibi et hæredibus suis*; I give to such a one, &c. to have and to hold to him and his heirs. *Bract.* fol. 17 b, 18. The word, however, was usually made to vary in gender and number, according to the precise appellation of the thing conveyed; *tenendam* being used with *terram* or *acram*, and *tenendas* with *acras*. *Sciunt præsentis et futuri, quod ego talis, dedi et concessi, &c. tantam terram cum pertinentiis, in tali villa, habendam et tenendam tali, &c.* Know [all men] present and to come, that I, such a one, have given and granted, &c. to such a one, &c. so much land, with the appurtenances, in such a town; to have and to hold, [literally, to be had, and to be held,] to such a one, &c. *Id.* fol. 34 b, 35.

The *tenendum* clause, as it is termed, in old deeds, is described as being expressed at length,—"*tenendum per servitium militare*," (to hold by knight service;) "*tenendum in burgagio*," (to hold in burgage;) "*tenendum in libero socagio*," (to hold in free socage.) 2 *Bl. Com.* 299. After the statute of *Quia Emptores*, it was expressed,—"*tenendum de capitalibus dominis feodi*," (to hold of the chief lords of the fee.) But this expressing nothing more than the statute had already provided for, the clause, according to Blackstone, gradually grew out of use; and Sheppard remarks that, in his day, it was, for the most part, omitted altogether. *Shep. Touch.* 80. The single word *tenendum*, (to hold,) was, however, retained, and joined to the *habendum*, in one clause. *Cruise's Dig.* tit. xxxii. ch. 2, sect. 52.

In modern conveyancing, the *tenendum* in this abridged form, (which corresponds with the use of it by Bracton, *ub. sup.*) is still in use, or, in other words, the English "*to hold*" is invariably used in immediate connection with "*to have*," (the ancient *habendum*;) and though deprived of its peculiar ancient significance, seems entitled to be regarded as something more than a mere word of form: the word "*hold*," in its ordinary sense of actual possession and entire control of a thing, adding in a considerable degree to the significance of the word "*have*," with which it is associated.

**TENENS.** Lat. [from *tenere*, to hold.] In old English law. A tenant; a holder; one who holds. The correlative of *dominus*, (lord.) *Fleta*, lib. 3, c. 12, § 3. *Debet tenens manus suas utrasque ponere*

*inter manus utrasque domini sui*; the tenant ought to put both his hands between both the hands of his lord. *Bract.* fol. 80. *Potest quis esse tenens meus reddendum mihi redditum*; a man may be my tenant by rendering to me a rent. *Id.* fol. 169.

**TENENS.** L. Lat. In old practice. Tenant; the tenant; the defendant in a real action. *Fleta*, lib. 6, c. 6, § 1.

**TENEO.** Lat. I hold, (or **TENERE**, to hold,) is said by Lord Coke to have the following significations:

To have, as an estate. *Co. Litt.* 1 b.

To hold of some superior. *Id. ibid.*

To keep, as a covenant. *Id. ibid.*

To bind, as an obligation. *Id. ibid.*

To judge or deem. *Id. ibid.*

See these senses applied to the word tenant. *Id. ibid.* See *Tenere*.

**TENER.** L. Fr. In old English law. To hold. *A aver et tener à luy et à ses heires*; to have and to hold to him and his heirs. *Litt.* sect. 625.

To keep. *Tener hors de droit heire*; to keep out the right heir. *Britt.* c. 65. *Si l'uncle ou l'aunte soit en seisine, ei teigne hors l'neveu*; if the uncle or the aunt be in seisin, and hold out the nephew. *Id.* c. 119. *Tenes vous al un*; keep yourself to one [issue.] *Yearb.* M. 5 Edw. III. 106, [plea.] M. 7 Edw. III. 31. T. 1 Edw. II. 14.

**TENERE.** Lat. In the civil law. To hold. A term expressive of mere fact without reference to right; or expressive of what was termed corporeal and natural possession. *Habere*, (to have,) and *possidere*, (to possess,) on the other hand, were terms expressive of right, or what was termed civil possession. *Calv. Lex.* See *Habere*.

To observe or keep. *Calv. Lex.*

To bind. *Id.*

To be of force or validity. *Id.*

**TENERE.** Lat. In old English law. To hold by service, in the feudal sense. *De tenemento quod de vobis teneo*; of the tenement which I hold of you. *Bract.* fol. 80. *Co. Litt.* 1 b.

To hold, judicially. *Tenere placitum*; to hold plea; to take cognizance of an action; to exercise or entertain jurisdiction. *Prohibemus vobis ne teneatis placitum*; we prohibit you that you do not hold plea. *Reg. Orig.* 34. *Tenere placita*; to hold pleas; to have a court of one's own. *Finch's Law*, b. 2, c. 14.

To hold, or be seised of; to have. *Co. Litt.* 1 b.

To hold; to bind. *Teneri*; to be held or bound. *Noverint universi me A. de tali com'*, *teneri B. in x marc'*; Know all men that I, A. of such a county, am bound to B. in ten marks. *Fleta*, lib. 2, c. 64, § 3.

To keep, fulfil or perform. *Præcipe A. quod, &c. teneat B. conventionem inter eos factum, &c.* Command A. that, &c. he keep with B. the covenant made between them. *Reg. Orig.* 165.

To do, perform or render. *Præcipimus vobis quod sine dilatione plenum rectum teneatis W. B. de uno mesuagio, &c.* We command you, that without delay you do full right to W. B. of one messuage, &c. *Reg. Orig.* 1.

To stand good; to have effect. *Tenet—tenebit breve*; the writ holds—will hold. *Bract.* fol. 189. *Cadit breve versus tales, licet teneat versus alios*; the writ falls or abates against such, though it holds against the others. *Id.* fol. 203.

**TENET**, (he holds,) and **TENUIT**, (he held.) L. Lat. In old practice. Words formerly applied to the writ of waste; the writ being said, with regard to the defendant, to be brought either in the *tenet* or the *tenuit*. In the *tenet*, where the particular estate was still subsisting, and the place wasted was to be recovered with damages; in the *tenuit*, where the particular estate had expired, and damages only were sought to be recovered. *Roscoe's Real Act.* 123.

**TENHEVED.** [Sax. *tienheofod*, from *tien*, ten, and *heofod*, head.] In old English law. The head of a tithing, or decenary; a tithingman, chief pledge, head borough or borsholder. *Spelman.*

**TENIER, Tener.** L. Fr. To hold; to accept or take. *Kelham.*

To think; to regard or look upon. *Id.*

**TENMANTALE, Tenmentale.** Sax. [from *tien*, ten, *men*, and *tale*, a number or count.] In Saxon and old English law. A tithing or decenary; the number of ten men. *LL. Edw. Conf.* c. 19.

A tribute paid to the king, of two shillings for every plough-land. *Hoveden*, A. D. 1194, cited in *Spelman*. *Cart.* 29 *Edw. I.* cited in *Cowell*.

**TENOR.** Lat. [from *tenere*, to hold or direct.] In feudal law. Tenor, or tenure; the mode of holding an estate or fee; a limiting or restricting to a certain course, time or quantity; the declaration or limitation of an estate; the express terms of the feudal donation. *Tenor est pactio, contra*

*communem feudi naturam ac rationem, in contractu interposita*; tenor is an agreement, contrary to the common nature and reason of a fee, interposed or inserted in the contract [by which it is conveyed.] *Hotoman de Verb. Feud. voc. Tenor feud.*

**Tenor est qui legem dat feodo.** It is the tenor [express terms of the feudal donation] which gives law to the fee. 2 *Bl. Com.* 310. *Wright on Ten.* 35, 21, 152. It is the tenor of the feudal grant which regulates its effect and extent. *Broom's Max.* 304, [346.] The declaration by the lord from whom the feud or fee moved, of the continuance or quantity of estate which he meant to confer, governed the fee. 2 *Bl. Com.* 310. *Tenor est qui dat legem feodo, et plerumque naturam feudi mutat*; it is the tenure which gives law to the fee, and for the most part changes the nature of the fee. *Crag. de Jur. Feud.* 50. *Zasius in Us. Feud.* fol. 123. *Wright on Tenures*, 21, note.

**TENOR.** Lat. and Eng. [from *tenere*, to hold on; to have a continuous progress.] The exact copy of a writing, pursuing the course of its words as they succeed one another.\* *Tenor* always imports a true copy of the thing written, and consists in identity. 3 *Salk.* 225. *Reg. Orig.* 220 b. "Tenor signifies the very words." *Holt, C. J.* 12 *Mod.* 218. See 1 *Cushing's R.* 65, 66. See *Purport*.

The true intent and meaning of an instrument. To do a thing according to the *tenor* of a writing, is to do it according to the true intent and meaning thereof. *Cowell.* "According to the *tenor*, true intent and meaning of these presents," is a clause of frequent occurrence in deeds and other instruments, from which the above explanation may have been derived.

**TENS.** L. Fr. Time. *Kelham.* An old form of *temps*.

**TENSER.** L. Fr. To keep; to perform. *Kelham.*

**TENTHS.** [Lat. *decimæ*.] In English law. A temporary aid issuing out of personal property, and granted to the king by parliament; formerly the real tenth part of all the moveables belonging to the subject. 1 *Bl. Com.* 308.

In English ecclesiastical law. The tenth part of the annual profit of every living in the kingdom, formerly paid to the Pope, but by statute 26 Hen. VIII. c. 3, transferred to the crown, and afterwards made

a part of the fund called Queen Anne's Bounty. 1 *Bl. Com.* 284—286.

**TEN'TUM.** A contraction of *tenementum*. 1 *Instr. Cler.* 13. *Com.* 228.

**TENTUS, Tentum.** L. Lat. In old English law. Held; holden. A barbarous participle formed from the verb *tenere*, (q. v.) *Ad curiam tentam ibidem quinto die Aprilis*; at a court held in the same place on the fifth day of April. *Chartulary of forms*, cited *Bl. Law Tr.* 108, note.

**TENUIT.** Lat. He held. See *Tenet*.

**TENURA.** L. Lat. In old English law. Tenure. *Mag. Cart.* 9 Hen. III. c. 33.

**TENURE.** L. Fr. and Eng. [from *tenere*, to hold; L. Lat. *tenura*.] A manner of holding; the mode of holding a feudal estate. *Tenure est la maniere par quoy les tenements sont tenues des seigneurs*; tenure is the manner by which tenements are held of lords. *Custom. de Norm.* c. 28. The mode or principle of holding of a superior by service; the fundamental principle of the feudal system.

In the law of England, the principle of *tenure* is still expressly retained, it being a fundamental maxim that all the land in the kingdom is *held*, mediately or immediately, of the sovereign. *Co. Litt.* 93 a, 1 a, 1 b, 65 a. *Wright on Tenures*, 136, 137. 2 *Bl. Com.* 59. 1 *Steph. Com.* 173. 3 *Kent's Com.* 487.

In the United States, government is theoretically considered the source of all titles to land, but in the proper feudal sense, the principle of tenure seems to be abrogated; tenants in fee being to all intents and purposes the absolute owners of their estates. See 1 *Hilliard's Real Prop.* 79—81, [37.] In some of the states, tenure in socage is said still to exist in theory, but in others it has been expressly abolished, and practically all land is now held by an allodial title. See 3 *Kent's Com.* 488, 509—514. 1 *Hilliard's Real Prop.* 80, 81, [39.] There is high authority, however, for the opinion that the great feudal principle of tenure has been acknowledged in American jurisprudence, and that we have no lands which are properly allodial, that is, which are not holden. 1 *Greenleaf's Cruise Dig.* 23, note. The *idea* of tenure certainly pervades, to a considerable degree, the law of real property in this country; and the *language* of tenure is everywhere in constant use, all proprietors, owners, or holders of

real estates being technically denominated *tenants*.

TENUS. L. Fr. Holden. *Dyer*, 29 b.

TERCE. [from Lat. *tertius*, third.] In Scotch law. Dower; right of dower. A relict's right to the life rent of a third of lands, tithes, wadsets, and annual rents in fee whereof her husband died infeft. 1 *Forbes' Inst.* part 2, p. 145.—The right which a widow has to the third part of the rents of the heritage in which her husband died infeft. *Bell's Dict.*

TERCER. In Scotch law. A widow that possesses the third part of her husband's land as her legal jointure. 1 *Kames' Equity*, pref.

TERM. [from L. Fr. *terme*; from Lat. *terminus*; Gr. *τέρμα*.] A limit; a bound or boundary, particularly of time.

A limitation of time. *Co. Litt.* 45 b. A limitation of an estate to a certain period: the period of time for which an estate is granted, as for life or years; the duration of an estate. See 1 *Chitt. Gen. Pr.* 159.

An estate or interest conveyed for a certain time, or limited to a certain period of time. *Co. Litt.* 45 b. *Burton's Real Prop.* 270, pl. 835. An estate for years is called a *term*, (*terminus*), because its duration or continuance is bounded, limited, and determined; for every such estate must have a certain beginning and certain end. 2 *Bl. Com.* 143.

A limited and fixed period of time during which courts are statedly held, sit, or are open for the hearing and trial of causes. See *Terms of Court*, *Terminus*.

A word, (*vocabulum*;) a word of art, or technical word; a descriptive expression. See *Terme*, *Terminus*, *Terms*.

TERM. In the civil law. A space of time granted to a debtor for discharging his obligation. *Poth. Obl.* part 2, ch. 3, art. 3, § 1.

TERM PROBATORY. In English ecclesiastical practice. A certain time within which the plaintiff is required to prove so much of the libel as the defendant has not confessed in his personal answers. *Haltifax, Anal.* b. 3, c. 11, num. 12. The appointment by the judge of such time. *Id.*

TERM TO PROPOUND ALL THINGS. In English ecclesiastical practice. An appointment by the judge of a time at which both parties are to exhibit all the acts and instruments which make

for their respective causes. *Id. ibid.* num. 22.

TERM TO CONCLUDE. In English ecclesiastical practice. An appointment by the judge, of a time at which both parties are understood to renounce all further exhibits and allegations. *Id. ibid.* num. 23.

TERME. L. Fr. [from Lat. *terminus*, q. v.] In old English law. A period of time; the term or period of an estate. *A terme que n'est mye uncore passe*; for a term which is not yet passed. *Britt.* c. 64. *Ceo mot terme se estent ausibien à terme de vie, come à terme des ans*; this word "term" extends as well to a term of life, as to a term of years. *Id.* c. 114.

A term; an estate for a certain limited period. *Graunde droit ad le fermer à recouper son terme, et son chatell*; great right hath the fermor, [termor or lessee,] to recover his term and his chattel. *Id. ibid.*

A term of court; a judicial period or season. *Et que les leyes et custumes de dit roialme, termes et processes, soient tenus et gardes, come ils sount et ount este avant ses heures*; and that the laws and customs of the said realm, the terms and processes, shall be observed and kept, as they are, and heretofore have been. *Stat. 36 Edw. III.* c. 15. *Spelman*.

A term, word, or technical expression; a word of art. *Et que per les auciens formes et termes de counter nul home soit perdant, issint que la matter del action soit pleniment monstre*; and that no man shall be a loser by the ancient forms and terms of pleading, so that the matter [or substance] of the action be fully shown. *Id. ibid.*

TERMINARE. Lat. In old English law. To end or determine; to dispose of judicially; to decide. *Loquelæ quæ atterminatæ fuerunt coram justitiariis de banco, et non terminatæ, remaneant sine die*; complaints which have been adjourned before the justices of the bench, and not determined, shall remain without day. *Bract.* fol. 355 b. *Et ea quæ per eosdem [justiciarios] propter difficultatem aliquorum articulorum terminari non possint, referantur ad justiciarios nostros de banco, et ibi terminentur*; and those matters which cannot be determined by the same [justices] on account of difficulty in some points, shall be referred to our justices of the bench, and shall be determined there. *Mag. Cart.* 9

Hen. III. c. 12. See *Fleta*, lib. 2, c. 3. § 8. Used in a similar sense in the civil law. *Oldendorpius. Prateus.*

**TERMINER.** L. Fr. [from Lat. *terminare*, q. v.] To determine. *A oyer et terminer toutes queeles*; to hear and determine all complaints. *Britt.* fol. 1.

**TERMINI.** Lat. (plur. of *terminus*, q. v.) Ends; bounds; limiting or terminating points.

**TERMINUS.** Lat. [from Gr. *τέρμα*.] A bound or limit, either of space or time; a limiting object, line, or point.

In the civil law. A mark or physical object, as a tree or stone, dividing one piece of land from another. *Dig.* 47. 21. *Calv. Lex. Prateus.*

A period of time fixed by law, (*terminus juris*.) *Id.*

A limited number. *Id.*

In old English law. A dividing or division line between lands, where metes or marks were set up. *Bundæ, et metæ, et rationabiles divisæ, quæ ponuntur in terminis et finibus agrorum*; bounds and metes and reasonable partitions, which are set up on the boundary lines and limits of lands. *Bract.* fol. 166 b, 167.

A term; a continuance of time; a fixed or limited period of time. *Si fiat donatio ad terminum annorum, quamvis longissimum, qui excedat vitas hominum, tamen ex hoc non habebit donatorius liberum teneamentum, cum terminus annorum certus sit, et determinatus, et terminus vitæ incertus*; if a gift be made for a term of years, though of the longest duration, exceeding the lives of men, yet the donee shall not, in consequence of this, have a freehold, since a term of years is certain and limited, and the term of life uncertain. *Bract.* fol. 27. *Durante termino*; during the term. *Id. ibid.* *Post terminum completum*; after the term ended. *Id. ibid.* *De termino in terminum*; from term to term. *Id. ibid.* Bracton makes a distinction between *terminus* and *tempus*. *Fieri poterit donatio ad terminum, vel ad tempus; ad terminum, vitæ vel annorum,—ad tempus, i. quousquæ, vel donec provisum fuerit donatorio*; a gift may be made for a term, or for a time; for a term, of life or years; for a time, as until provision be made for the donee. *Bract.* fol. 26 b.

A term; an estate granted for a limited period; a term for years or life. *Co. Litt.* 45 b. 2 *Bl. Com.* 143. *Terminus et feodum non possunt constare simul in una eademque persona.* The term and the fee

cannot exist together in one and the same person. *Plowd.* 29.

A term of court; a juridical period of time. *Spelman. Terminus Paschæ*; Easter Term. *Terminus Trinitatis*; Trinity Term. *Terminus Sancti Michaelis*; Michaelmas Term. *Terminus Sancti Hilarii*; Hilary Term. *Id.*

A term or word, (*vocabulum*.) *Id.*

**TERMINO.** Span. In Spanish law. A common; common land. Common because of vicinage. *White's New Recop.* b. 2, tit. 1, c. 6, § 1, note.

**TERMINUS.** Lat. In modern law. A limiting point either of time or space, and either at the beginning or end of a period. The *termini* of a voyage are the two local points at which it begins and ends. The *terminus à quo* (limit from which,) is the point where it begins; the *terminus ad quem*, (limit to which,) is the point where it ends. 3 *Kent's Com.* 185. The *termini* of a road or way, are the two points at which it begins and ends. 1 *East*, 377. 8 *Id.* 4, 394.

In insurance law, the *termini* of the voyage are the two local points specified in the policy as the limits of the risk. 1 *Arnould on Ins.* 333, (339, Perkins' ed.) The *terminus à quo*, or place at which the risk commences, in policies on ships, is the port of departure; in policies on goods, the port of lading, which frequently but not necessarily, is the same place. *Id. ibid.* The *terminus ad quem*, or point at which the risk ends, is the port of the ship's destination, or the port or ports of the cargo's discharge. *Id. ibid.* *Emerig. Tr. des Ass.* ch. 13, sect. 4, § 1.

The expressions, *terminus à quo*, and *terminus ad quem*, are also sometimes applied to points of time. See 7 *Man. & Gr.* 149, 150, arg.

**TERMINUS HOMINIS.** L. Lat. In English ecclesiastical practice. A time for the determination of appeals, shorter than the *terminus juris*, appointed by the judge. *Hallifax, Anal.* b. 3, c. 11, num. 38. See *Terminus juris*.

**TERMINUS JURIS.** L. Lat. In English ecclesiastical practice. The time of one or two years, allowed by law for the determination of appeals. *Hallifax, Anal.* b. 3, c. 11, num. 38.

**TERMOR.** [L. Fr. *termier*; L. Lat. *firmarius*.] One who has a term in lands; one who holds lands for a certain time, as for a limited number of years; one who is

entitled to a term of years; a lessee for a term. 2 *Bl. Com.* 142. Called, in the French of Britton, *termier* and *fermier*, and in the statute of Gloucester, *termour*. *Britt.* c. 64. *Stat. Gloc.* c. 11. Called, by Lord Bacon, *terminor*. *Works*, iv. 216, 217.

**TERMS.** In the law of contracts. Conditions; propositions stated, or promises made, which, when assented to or accepted by another, settle the contract and bind the parties. *Webster*. "Terms is an expression applicable to the conveyances and covenants to be given, as much as to the amount of, and the time of paying the consideration." Woodbury, J. 8 *Howard's R.* 451, 466, citing 10 *Wendell's R.* 219. See 1 *Wisconsin R.* 313, 314.

**TERMS OF COURT.** In practice. Those stated periods of the year, during which courts sit for the dispatch of business. The terms of the English courts are supposed by Mr. Selden to have been instituted by William the Conqueror, but Sir Henry Spelman has clearly shown, in the opinion of Blackstone, that they were gradually formed from the canonical constitutions of the church; being indeed no other than those leisure seasons of the year which were not occupied by the great festivals or fasts, or which were not liable to the general avocations of rural business. 3 *Bl. Com.* 275.

**TERRA.** Lat. In old English law. Land; properly, arable land. *Reg. Orig.* 2. 10 *Mod.* 186. So called, according to Lord Coke, à *terendo, quia vomere teritur*; (from breaking up, because it is broken by the ploughshare.) *Co. Litt.* 4 a. 1 *Chitt. Gen. Pr.* 179, 180, note. See *Land*.

*Terra culta*; tilled or cultivated land. *Cowell*.

*Terra excultabilis*; land that may be tilled or ploughed. 1 *Mon. Angl.* 426.

*Terra frusca*, or *frisca*; fresh land; not lately ploughed. 2 *Mon. Angl.* 327.

*Terra lucrabilis*; land that might be gained from the sea, or enclosed out of a waste, to particular use. 1 *Mon. Angl.* 406.

*Terra Normannorum*; Norman's land. Land so called in the reign of Henry III. being such as had been lately held by some noble Norman, who, by adhering to the French king or dauphin, had forfeited his estate in England, which by this means became an escheat to the crown. *Paroch. Ant.* 197. *Cowell. Hale's Anal.* sect. viii.

*Terra nova*; new land. Land newly granted, or newly cleared. *Spelman*.

*Terra sabulosa*; gravelly or sandy ground. *Cowell*.

*Terra testamentalis*; land held by charter or writing; boc-land. *Spelman*. Land that might be disposed of by will; devisable land. *Cowell*.

*Terra vestita*; land sown with corn; (*terra segete sata*.) *Spelman*. Called, in Saxon, *gesettes-landes*. *LL. Canuti*, 65 MS.

**TERRA SALICA.** L. Lat. [from *sala*, a house.] In the Salic law. Salic land; the land of the house; the land within that enclosure, which belonged to a German house. *Esprit des Loix*, liv. 18, c. 22. *De terra vero Salica in mulierem nulla portio hæreditatis transit, sed hoc virilis sexus acquirit, hoc est, filii in ipsa hæreditate succedunt*; no portion of the inheritance of Salic land passes to a woman, but this the male sex acquires, that is, the sons succeed in that inheritance. *L. Salic.* tit. 62, § 6.

**TERRAGE.** [L. Lat. *terragium*, from *terra*, land.] In old English law. A kind of tax or charge on land; a boon or duty of ploughing, reaping, &c. *Cowell*.

**TERRAR.** [L. Lat. *terrarium*, from *terra*, land.] In old English law. A book or roll containing a description of the several lands of an individual or of a town; a list of lands, (*catalogus terrarum*.) *Spelman*. Otherwise written *terrier*, (q. v.)

**TERRARIUS.** L. Lat. [from *terra*, land.] In old records. A land-holder, (*qui terram possidet*.) *Annal. Waverl.* in ann. 1086. *Spelman*.

**TERRE, Tere.** L. Fr. [from Lat. *terra*, q. v.] Land. *Taunt de terre ove les apurtenances*; so much land with the apurtenances. *Britt.* c. 39.

**TERRE-TENANT, Ter-tenant.** L. Fr. and Eng. A tenant, holder or occupier of land; a person in actual possession or occupation of land. *Cowell.* 2 *Bl. Com.* 91, 328.

**TERRIER.** [from L. Fr. *terre*, land.] In English law. A register or survey of lands; a book or roll in which the several lands, either of an individual or corporation, are described, containing the quantity of acres, boundaries, tenants' names, &c. Called anciently *terrar*, (q. v.) *Cowell*. See *Arch. Pl. & Evid.* 413, 414. Particularly applied to ecclesiastical lands. *Tamlyn's Law of Evid.* 144. By the ecclesiastical canons, an inquiry is directed to be made from time to time, of the temporal rights of the clergyman in every parish, and to be returned into the registry of the bishop.

This return is denominated a *terrier*. 2 *Phillips on Evid.* 119. See *Anst.* 300—305. 15 *East*, 641.

**TERRITORIUM.** Lat. [from *terra*, land.] A territory, or district; the territorial limits of a government; the extent or limits of the jurisdiction of a court. See *Extra territorium*. Called by Pomponius in the Digests, the whole amount of the lands within the limits of any state, (*universitas agrorum intra fines cujusque civitatis*.) *Dig.* 50. 16. 239. 8. The same writer observes that, according to some, the word was derived from the circumstance that the magistrate of the place has within those limits, the right of terrifying, that is, of clearing away, (*terrendi, id est summovendijus habet*.) See the various derivations of the word in *Grotius, de Jur. Bell.* lib. 3, c. 6, § 4, n. 2. Gronovius, in a note on Grotius, (*in loc.*) remarks that the etymon of Pomponius is the only true one, and explains it by a reference to the usages of the Roman magistrates.

**TERTIA.** Lat. In old English and Scotch law. Third; (third part, *tertia pars*;) dower. *Spelman. Crag. de Jur. Feud.* 308. 2 *Bl. Com.* 129. Closely rendered in Scotch, *terce*, (q. v.)

**TERTIA DENUNCIATIO.** Lat. In old English law. Third publication or proclamation of intended marriage. *Cum banum et tertia denunciatio fiat*; when the banns and third publication are made. *Bract.* fol. 307 b.

**TERTIUS INTERVENIENS.** L. Lat. In the civil law. A third person intervening; a third person who comes in between the parties to a suit; one who interpleads. *Gilbert's For. Rom.* 47. A party intervening in behalf of his interest. *Clerke's Prax. Cur. Adm.* tit. 35.

**TESMOYN, Tesmoyne.** L. Fr. In old English law. A witness. *Et les nosmes des tesmoynes soient lus, et escritz en la chartre; et bone cautele serra de procurer que les seals de tesmoynes fussent mys*; and the names of the witnesses should be read, and written in the charter [deed]; and it will be a good precaution to have the seals of the witnesses affixed. *Britt.* c. 39.

**TESMOYNAGE.** L. Fr. Testimony. *Britt.* c. 15.

**TESMOYNAUNCE.** L. Fr. Testimony. *Britt.* c. 1.

**TEST ACT.** In English law. The popular name of the statute 25 Car. II.

c. 2, by which it was provided, that all persons having any office, civil or military, (with the exception of some few of an inferior kind,) or receiving pay from the crown, or holding a place of trust under it, should take the oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation, and also receive the sacrament of the Lord's Supper, according to the usage of the Church of England. 3 *Steph. Com.* 105. This provision had the effect of excluding not only Papists, but many classes of Protestant Dissenters, also, from every considerable place of trust or public employment; but it was mainly pointed against the former. *Id. ibid.* Sir William Blackstone calls this and the Corporation Acts, "two bulwarks, erected in order the better to secure the established church against perils from non-conformists of all denominations, infidels, Turks, Jews, heretics, Papists and sectaries." 2 *Bl. Com.* 58. It was repealed, however, in the year 1828, by statute 9 Geo. IV. c. 17, so far as regarded the administration of the sacrament, and a new form of declaration substituted. 3 *Steph. Com.* 108.

**TEST PAPER.** In practice. A paper or instrument shown to a jury as evidence. A term used in the Pennsylvania courts. 7 *Penn. St. (Barr's) R.* 428. Called also a standard paper. 6 *Wharton's R.* 284.

**TESTA DE NEVIL.** An ancient and authentic record in two volumes, in the custody of the Queen's Remembrancer in the Exchequer, said to be compiled by Jollan de Nevil, a justice itinerant, in the eighteenth and twenty-fourth years of Henry III. *Cowell.* These volumes were printed in 1807, under the authority of the Commissioners of the Public Records; and contain an account of fees held either immediately of the king, or of others who held of the king *in capite*; fees holden in frankalmoign; serjeanties holden of the king; widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king; churches in the gift of the king; escheats, and sums paid for scutages and aids; especially within the county of Hereford. *Cowell. Wharton's Lex.*

**TESTAMENT.** L. Fr. and Eng. [from Lat. *testamentum*, from *testari*, to testify, or attest.] A disposition of property, to take effect after the death of the person making it.\* 4 *Kent's Com.* 501. See *Will*.

A disposition of *personal* property, to

take effect after the death of the person making it.\* *Id. ibid.* This is considered the proper sense of the term, in some of the old books. *Co. Litt.* 111 a. See *infra*.

A formal declaration or expression of a person's will, as to the disposition he would have made of his property after his death. This is a translation of the celebrated definition of the civil law,—*Testamentum est voluntatis nostræ justa sententia, de eo quod quis post mortem suam fieri velit.* *Dig.* 28. 1. 1. Blackstone's translation of this definition is, "the legal declaration of a man's intentions, which he wills to be performed after his death." 2 *Bl. Com.* 499. For other translations, see *Testamentum*. Webster's definition presents essentially the same idea,—“a solemn authentic instrument in writing, by which a person declares his will as to the disposal of his estate and effects after his death.”

\* \* A testament has been distinguished from a will, both by common lawyers and civilians, but on different grounds. Swinburne, and other civilians, while they admit that, in a general sense, the words are synonymous, contend that, in a strict and proper sense, a testament was that kind of a will in which an executor was named, and that the appointment of an executor was of the essence of a testament, without which a will was no proper testament. *Swinburne on Wills*, part 1, sect. 1, 3. See *Finch's Law*, b. 2, ch. 15. This idea was derived from the *testamentum* of the civil law, an essential requisite of which was the appointment of an heir, (*hæres*), to take the testator's property. *Inst.* 2. 23. 2. A different distinction was made between a testament and a will by the old common lawyers. Lord Coke observes that, “in law, most commonly *ultima voluntas in scriptis*, (a last will in writings,) is used where lands or tenements are devised, and *testamentum*, (testament,) where it concerneth chattels.” *Co. Litt.* 111 a. Mr. Cruise notices both these distinctions, and expressly adopts the latter, in distinguishing a testament from a devise. *Cruise Dig.* tit. xxxviii. ch. 1, sect. 11. The distinction made by Swinburne, though adopted by Wentworth and other writers, may be considered as exploded in modern law. That of Lord Coke has maintained its ground more effectually. See 4 *Kent's Com.* 501. 1 *Jarman on Wills*, 1. And yet Sheppard expressly observes that

“these words [*testament* and *will*, or last will,] are synonyma, and are, as it seems, promiscuously used in our law.” *Shep. Touch.* 399. And Littleton himself, in the very section commented on by Lord Coke, applies the word *testament* to a disposition of lands. *Home poit deviser per son testament ses terres et tenements.* *Litt.* sect. 167. In modern law, the terms *will* and *testament*, are generally used without distinction, to express the instrument by which a man makes disposition of his property after his death. 1 *Steph. Com.* 544. Where the instrument is more formally described, both terms are made use of, and it is called a *last will and testament*. See 4 *Kent's Com.* 501. This conjoint use of both terms may be traced back as far as the old writ *de tenementis legatis* in the Register, in which the phrase, *in testamento suo, in ultima voluntate sua*, occurs twice. *Reg. Orig.* 244 b.

The derivation of *testamentum* from *testari* and *mens*, formally adopted in the Institutes of Justinian, will be considered under *Testamentum*.

TESTAMENTARY. [from *testamentum*, a will.] Pertaining to a will or testament; as *testamentary* causes.

Derived from, founded on, or appointed by a testament or will; as a *testamentary* guardian, letters *testamentary*, &c.

TESTAMENTARY CAUSES. In English law. Causes or matters relating to the probate of wills, the granting of administrations, and the suing for legacies, of which the ecclesiastical courts formerly had jurisdiction. 3 *Bl. Com.* 95, 98.

TESTAMENTARY GUARDIAN. A guardian appointed by the last will of a father, for the person, and real and personal estate of his child, until the latter arrives of full age. 1 *Bl. Com.* 462. 2 *Kent's Com.* 224.

TESTAMENTO. Span. [from Lat. *testamentum*.] In Spanish law. A testament. *Testamento abierto*; an open testament; one dictated *vivâ voce*. *Schmidt's Civ. Law*, 214. *Testamento cerrado*; a close testament; one made in secret. *Id.* 215.

TESTAMENTUM. Lat. [from *testari*, to witness or attest; Gr. διαθήκη, (q. v.) a disposition.] In the civil law. A testament; a will, or last will; (Gr. τελευταία βουλήσις.) See *Voluntas*.

*Testamentum est voluntatis nostræ justa sententia, de eo quod quis post mortem suam*

*feri velit.* A testament is the formal expression of one's will, respecting what one would have done after his death. *Dig.* 28. 1. 1. See *Id.* 29. 3. 2. 1. Translated, in the more antiquated language of Swinburne, "the just sentence of our will, touching that we would have done after our death." *Swinburne on Wills*, part 1, sect. 2. This has been adopted as the definition of a testament, in 1 *Williams on Executors*, 6. And see *Taylor's Civ. Law*, 531, 532, 534. Blackstone translates the same definition, "the legal declaration of a man's intentions, which he wills to be performed after his death." 2 *Bl. Com.* 499. In the *Termes de la Ley*, it is rendered, "the true declaration of our last will, in that we would to be done after our death." In Sheppard's Touchstone,—"the full and complete declaration of a man's mind, or last will of that he would have to be done after his death." *Shep. Touch.* 399. It will be seen that in the original definition, there is no express reference to *property*, as the subject of the testamentary disposition. Mr. Preston, in his edition of Sheppard, has supplied this idea, by adding to the translation of that author, the clause, [by way of disposition of his property.]

Swinburne goes largely into detail in commenting on this definition, dwelling especially on the force of the words *justa* and *sententia*; but the essence of his observations is much more forcibly and elegantly given by Blackstone.

\* \* The celebrated etymology of *testamentum* in the Institutes, may be noticed under this head. In the *principium* of the tenth title of the second book, Justinian briefly but emphatically declares that *Testamentum ex eo appellatur, quod testatio mentis sit*; a testament is so called, because it is a testifying of the mind. This derivation seems to have been adopted from Servius Sulpicius, a distinguished jurist who flourished before the reign of Augustus, and who, in his second book, *De sacris detestandis*, declared the word to be composed of *contestatio* and *mentis*. Its absurdity was long ago pointed out by Aulus Gellius, and later, by the grammarian Laurentius Valla, who very satisfactorily show *testamentum* to be a simple word, framed from the verb *testari*, by the use of a common termination, and belonging to the same class with the words *calceamentum*, *condimentum*, *pavimentum*, *regimen-*

*tum*, *salsamentum*, *vestimentum* and others. *A. Gell. Noct. Att.* vi. 12. *Laurent. Vall. Elegant.* lib. 6, c. 36. The civilians, however, as might be expected, have strongly sustained the derivation, though upon different grounds. Swinburne defends it as being not intended as a precise etymology of the word, but "a certain allusion rather of the voice only," meaning probably that it was an explanation drawn from the casual coincidence between the *sound* or *form* of the word and its essential meaning. *Swinburne on Wills*, part 1, sect. 1. Other civilians have treated it as being properly a mere definition,—*testatio mentis*, a solemn declaration of the mind or intention. That it was intended, however, as an etymon in the proper sense, is clear from the text of the Institutes. Calvin concedes this, and boldly justifies it to its full extent, claiming for juriconsults the license or right of framing their derivations according to the supposed nature of things, without regard to the proprieties of language or the niceties of grammar. (!) *Calv. Lex. voc. Testamentum.*

Lord Coke agrees with Justinian in the composition of the word *testament*, it being entirely to his taste in matters of derivation, as evidenced in his analysis of *sacramentum*, and other words of similar form. *Co. Litt.* 322 b. 3 *Inst.* 165. Blackstone, however, pronounces it to be "an etymon which seems to savour too much of the conceit," adding, very justly, that "the definition of the old Roman lawyers is much better than their etymology." 2 *Bl. Com.* 499.

TESTAMENTUM. Lat. [from *testari*, q. v.] In old English law. A testament, or will; a disposition of property made in contemplation of death. *Bract.* fol. 60. Bracton treats it as a species of *donatio mortis causa*. *Id. ibid.* See *Fleta*, lib. 2, c. 57. *Executoribus ad faciendum testamentum defuncti*; to executors to carry into effect the testament of the deceased. *Mag. Cart.* 9 Hen. III. c. 18.

A writing, charter or instrument, by which conveyances of lands and other things were made; so called, because it operated as a *testimony* or evidence of the transaction, or because it comprehended the names of the witnesses, (*testium nomina contineret.*) *Spelman.*

TESTARI. Lat. [from *testis*, a witness.] In the civil law. To testify; to attest; to declare, publish or make

known a thing before witnesses. *Calv. Lex.*

To make a will. *Id.*

TESTATE. [from Lat. *testatus*.] One who has made a will; one who dies leaving a will; the opposite of *intestate*, but much less frequently used. See 25 *Penn. St. R.* 31.

TESTATO. Lat. In the civil law. Testate; having made a will. *Dig.* 50. 17. 7. See *Testatus*.

TESTATOR. Lat. and Eng. [from *testari*, to make a will.] One who makes or has made a testament or will; one who dies leaving a will. This term is borrowed from the civil law. *Inst.* 2. 14. 5. 6.

TESTATRIX. L. Lat. and Eng. [fem. of *testator*, q. v.] A woman who makes, or has made a testament or will; a woman who dies leaving a will; a female testator.

TESTATUM. Lat. (Testified.) In practice. The name of a clause inserted in a writ of *capias*, or execution, when it is issued after the return of *non est inventus*, or *nulla bona* to a previous writ, but to the sheriff of a different county; reciting the former writ, and that it is testified, (*testatum est*, in the old forms,) that the defendant lurks or wanders, or has goods in the county to which the second writ is issued. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 128. 2 *Id.* 1022.

TESTATUM WRIT. In practice. A writ containing a *testatum* clause; such as a *testatum capias*, a *testatum fi. fa.* and a *testatum ca. sa.* See *Testatum*.

TESTATUS. Lat. In the civil law. Testate; one who has made a will. *Testatus et intestatus*; testate and intestate. *Dig.* 50. 17. 7.

TESTE. L. Lat. (Witness.) In old English practice. The initial and emphatic word of the clause at the conclusion of writs, containing the attestation of the sovereign, or chief justice out of whose court it was issued, and the day on which it was issued or granted. In original writs, it ran thus: *TESTE MEIPSO, apud Westmonasterium, xiiii die Junii, anno regni nostri tricesimo septimo.* (Witness ourself at Westminster, the twenty-fourth day of June, in the thirty-seventh year of our reign.) *Reg. Orig.* 1, *et passim.* *Id.* Appendix, 1—10. In judicial writs, the clause ran thus: *TESTE Matthæo Hale, Milite, apud Westmonasterium, &c.* (Witness, Sir Matthew Hale, Knight, at Westminster, &c.) *Cowell.* It corresponded

to the *date* of other instruments, and is called the *date*, (L. Lat. *data*, L. Fr. *date*), in Bracton and Britton. See *Data, Date*.

In modern practice, the word *teste* has been retained as the name of the corresponding clause in modern writs, (which is merely a translation of the old form,) being particularly applied to the *day* on which the writ is *witnessed*, that is, issued or supposed to be issued, though it is expressive also of the *place* where the court is or was sitting at such time. It has indeed been converted into a verb, a writ being frequently said to be *teste'd* (or, as it is usually written, *tested*) of such a day.

TESTE MEIPSO. L. Lat. (Witness ourself.) In old English law and practice. A solemn formula of attestation by the sovereign, used at the conclusion of charters, and other public instruments, and also of original writs out of chancery. *Spelman.*

*Teste meipsa*, were the words used by a queen. The first writ in the Register is a writ of right patent, running in the name of Queen Elizabeth, and concluding with the clause, *Teste meipsa apud Westmonasterium, &c.* *Reg. Orig.* 1.

TESTES. Lat. [plur. of *testis*, q. v.] In the civil and old English law. Witnesses. *Possunt omnes testes et uno annulo signare testamentum*; all the witnesses may seal the will with one ring or signet. *Inst.* 2. 10. 5.

*Ponderantur testes, non numerantur*, (q. v.) Witnesses are weighed, not counted.

*Testibus deponentibus in pari numero, dignioribus est credendum.* Where the witnesses who testify are in equal number [on both sides,] the more worthy are to be believed. 4 *Inst.* 279.

TESTES. L. Fr. In old English law. Heads; polls. *Yearb. T.* 5 Edw. III. 21.

TESTIFICARE. Lat. [from *testis*, witness, and *facere*, to make.] In practice. To testify; to give evidence. *Ad testificandum*; to testify. See *Habeas corpus ad testificandum*.

TESTIFY. [from Lat. *testificare*, q. v.] To give evidence; to bear witness; to declare under oath or affirmation before a tribunal, court, judge or magistrate, for the purpose of proving some fact.

TESTIMONIO. Span. [from Lat. *testimonium*, q. v.] In Spanish-American law. An attested copy of an instrument; a second original. 8 *Texas R.* 210. 7 *Id.* 332, 378.

**TESTIMONIUM.** Lat. In civil and old English law. Testimony; evidence of a witness. *Calv. Lex.* *Testimonia ponderanda sunt, non numeranda.* Evidences are to be weighed, not numbered or counted. *Bell's Dict.*

Attestation of an instrument. *Fleta*, lib. 2, c. 60, § 25.

**TESTIMONIUM CLAUSE.** In conveyancing. That clause of a deed or instrument with which it concludes: "In witness whereof, the parties to these presents have hereunto set their hands and seals." This, in the old Latin forms, ran: *In cujus testimonium, partes, &c.* whence the clause has received its name. It is said to be introduced, not as constituting any part of the deed, but merely to preserve the evidence of the due execution of it. Daniel, J. 8 *Howard's R.* 33—39. See 6 *Man. & Gr.* 386. A deed without it was held good in *Dyer*, 22 b. Both Coke and Blackstone, however, enumerate it among the formal and orderly parts of a deed. *Co. Litt.* 6 a. 2 *Bl. Com.* 304.

**TESTIMONY.** [from Lat. *testimonium*.] Evidence of a witness, or witnesses; evidence given by a witness, under oath or affirmation; as distinguished from evidence derived from writings, and other sources.

**TESTIS.** Lat. In the civil and common law. A witness. *Dig.* 22. 5. *Cod.* 4. 20. *Nov.* 90. Called, in the old Roman law, *superstes*, and *antistes*. *Calv. Lex.* See *Best on Evid.* 140, § 114, note.

**Testis de visu præponderat aliis.** An eye-witness is of more weight than others. 4 *Inst.* 279.

**Nemo in propria causa testis esse debet,** (q. v.) No man ought to be a witness in his own cause. **Nullus idoneus testis in re sua intelligitur.** No one is considered a fit witness in his own matter, [business or cause.] *Dig.* 22. 5. 10.

**Testis corruptus;** a bribed or corrupted witness; one prevailed upon by money or persuasion to give evidence. *Calv. Lex.*

**Testis incertus;** a doubtful or unreliable witness; one who testifies from hearsay. *Id.*

**Testis inimicus;** an unfriendly or hostile witness. *Id.*

**Testis juratus;** a sworn witness. *Id.*

**TEXTUS ROFFENSIS.** L. Lat. In old English law. The Rochester Text. An ancient manuscript containing many of the Saxon laws, and the rights, cus-

toms, tenures, &c. of the church of Rochester, drawn up by Ernulph, bishop of that see, from A. D. 1114, to 1124. *Cowell.* Blount gives it a much higher antiquity.

**THANAGE OF THE KING.** [L. Lat. *thanagium regis*.] In old English law. A certain part of the king's land or property, of which the ruler or governor was called *thane*. *Cowell. Blount.*

**THANE, Thayne.** [Sax. *thegen*, from *thenian*, to serve; L. Lat. *thanus*.] In Saxon law. A noble; a freeman of the highest rank. 1 *Reeves' Hist. Eng. Law*, 5. 1 *Spence's Chancery*, 5.

One who served the king; a king's tenant. *Cowell.* Mr. Selden supposes *thane* to have been a feudal title. *Wright on Tenures*, 47, note (c.)

**THASSARE, Tassare.** L. Lat. In old records. To lay up hay or corn [grain] into a tass, toss, stack, rick or mow. *Paroch. Antiq.* 550. *Cowell.*

**THEADA, Theoda, Theuda.** L. Lat. [from Sax. *theod*.] People; a people or nation. *L. Salic.* tit. 48. *Spelman.*

**THECLATURA.** L. Lat. In old European law. A mark upon a tree. *LL. Longobard.* lib. 1, tit. 26. *Spelman.*

**THEFT.** See *Larceny*.

**THEFT-BOTE.** [from Sax. *thecofte*, theft, and *bote*, a composition or fine.] In Saxon law. A sum paid by way of composition or satisfaction for a theft. *Spelman.*

In old English law. The receiving of goods from a thief, to favor and maintain him. *Spelman. Cowell.* In this application, *Spelman* supposes *bote* to have the sense of *booty*, or plunder (*præda*.)

**ΘΕΙΑ, *oëia*.** Gr. In the civil law. An aunt. A term applied to both paternal and maternal aunts. *Inst.* 3. 6. 1. Expressed in Latin, *Thia*, (q. v.)

**ΘΕΙΟΣ, *oëios*.** Gr. In the civil law. An uncle. A term applied to both paternal and maternal uncles. *Inst.* 3. 6. 1.

**THELONIUM.** L. Lat. Toll. See *Theolonium*.

**ΘΗΛΥΓΟΝΙΑ, *thelygonia*.** Gr. [from *θηλυ*, female, and *γονος*, generation.] In the civil law. The female line. *Nov.* 118, c. 1.

**THEM.** Sax. In old English law. Another form of *theme*, (q. v.) *Fleta* defines it "an acquittance of amercements of the following of their villeins," (*acquietantiam amercementorum sequelæ propriorum suorum*.) *Fleta*, lib. 1, c. 47, § 9.

**THEME.** Sax. In Saxon law. The

power of having jurisdiction over naifs or villeins, with their suits or offspring, lands, goods and chattels. *Co. Litt.* 116 a. Otherwise written *them* and *team*, (qq. v.) The word occurs in old Scotch law, and is defined by Skene, the power of having servants and slaves. *De Verb. Signif.*

**THEMITLE.** L. Lat. In old records. Trees planted in fields for fencing or protecting hedges. *Spelman.*

**THEN.** Sax. In old English law. A slave. *Co. Litt.* 116 a. *Spelman.* Misprinted in *Fleta*, (lib. 1, c. 47, § 27,) *thett*.

**THEN.** [Lat. *tunc*, L. Fr. *donque*.] A common word of reference in wills and other instruments. Where life interests are bequeathed to several persons in succession, terminating with a gift to children, or any other class of objects, "then living," the word "then" is held to point to the period of the death of the person last named, (whether he is, or is not the survivor of the several legatees for life,) and is not considered as referring to the period of the determination of the several prior interests. 8 *Sim.* 448.

**THEODEN.** Sax. In Saxon law. A husbandman or inferior tenant; an under thane. *Cowell.*

**THEODOSIAN CODE.** See *Code of Theodosius*.

**THEOLONIUM.** L. Lat. [from Lat. *telonium*, q. v.] In old English law. Toll. *Quieti de thecolonio per totum regnum nostrum*; quit of toll throughout our whole realm. *Reg. Orig.* 258 b. See *Fleta*, lib. 2, c. 50, § 30. Otherwise written *thelonium* and *tholonium*. *Spelman*, voc. *Thol*. Called "a barbarous word, and derived from *τελος* and *τελώνες*, receivers of tribute." 2 *Show.* 35. See *De essendo quietum de theolonio*.

**THEOLNETUM.** L. Lat. In old English law. Toll. *Fleta*, lib. 2, c. 50, § 30.

**THEOTHING, Thething.** Sax. In Saxon law. A tithing. 2 *Inst.* 73. See *Tithing*.

*Theothing-man*; a tithing-man. *Id. ibid.*

**ΘΕΟΥ ΒΙΑ, Θεού βία.** Gr. In the civil law. The force or power of God; the act of God. *Dig.* 19. 2. 25. 6. *Vinnius ad Inst.* lib. 3, tit. 15, § 2, n. 5. *Story on Bailm.* § 30.

"THEREUNTO BELONGING," in a will, construed. 8 *Moore*, 665. 2 *B. & Adol.* 680. 1 *Jarman on Wills*, 771—713, (608, 609, Perkins' ed.)

**THESAURER.** Sc. Treasurer. 3 *St. Trials*, 691.

**THESAURUS.** Lat. In the civil law. Treasure; a sum of money hidden or buried. *Inst.* 2. 1. 39. A deposit or concealment of money made so long ago that no memory of it exists, so that it is now without an owner, (*vetus depositio pecunie, cujus non extat memoria, ut jam dominum non habeat*.) *Calv. Lex. Brissonius*. This description of treasure is copied by Bracton, and from Bracton by Lord Coke. *Bract.* fol. 120. 3 *Inst.* 132. See *Fleta*, lib. 1, c. 43, § 2.

In old English law. Treasury, or exchequer. *Cowell.*

**THESAURUS ABSCONDITUS.** Lat. In old English law. Treasure hidden, or buried. *Spelman.*

**THESAURUS INVENTUS.** Lat. In old English law. Treasure found; treasure-trove. *Bract.* fol. 119 b, 122. *Fleta*, lib. 1, c. 18, § 20. *Id.* lib. 2, c. 52, § 11. 1 *Bl. Com.* 95.

**THEYN.** Sax. In old English law. A freeman. *Fleta*, lib. 1, c. 47, § 26.

**THIA.** Lat. In the civil and old European law. An aunt. The Latin form of the Gr. *θία*, (q. v.) The Ital. *zia*, and Span. *tia* are from the same source. *Spelman.*

**THIFT.** Sc. In Scotch law. Theft. *Thift-bute*; theft-bote, (q. v.) 1 *Pitc. Cr. Trials*, part 2, p. 144.

**THING, Thung.** Sax. In Saxon law. A lathe, or hundred. *Spelman.* In *quibusdam vero provinciis Angliæ, vocatur lede quod isti thing*: but in some provinces of England, that is called *lede* (lathe) which they call *thing*. *LL. Edw. Conf.* c. 34. *Hoved. ed. apud Spelman*, voc. *Thungrevius*.

**THINGS.** [Lat. *res*; Fr. *choses*.] The most general denomination of the subjects of property, as contradistinguished from persons. 2 *Bl. Com.* 16.

"THINGS," in a will, is generally construed to mean things *ejusdem generis*, (of the same kind.) 1 *Dow*, 73. *Sugden's Law of Property*, 221, 222. It will be limited to personal effects, if its connection with other words require. 1 *Jarman on Wills*, 693, (595, Perkins' ed.)

Things are construed according to that which was the cause thereof. *Finch's Law*, b. 1, c. 3, n. 4.

Things are dissolved as they be contracted. *Id.* b. 1, c. 3, n. 7.

Things grounded upon an ill and void begin-

ning cannot have a good perfection. *Id.* b. 1, c. 3, n. 8.

Things incident cannot be severed. *Id.* b. 1, c. 3, n. 12.

Things accessory are of the nature of the principal. *Id.* b. 1, c. 3, n. 25.

THINGS REAL, (otherwise called REALTY.) Such things as are permanent, fixed and immoveable, which cannot be carried out of their place, as lands and tenements. 2 *Bl. Com.* 16. This definition has been objected to, as not embracing incorporeal rights. Mr. Stephen defines *things real* to "consist of things substantial and immoveable, and of the rights and profits annexed to, or issuing out of these." 1 *Steph. Com.* 156. *Things real* are otherwise described to consist of lands, tenements and hereditaments. See *Real*.

THINGS PERSONAL. Goods, money and all other moveables, which may attend the owner's person wherever he thinks proper to go. 2 *Bl. Com.* 16. Things personal consist of goods, money, and all other moveables, and of such rights and profits as relate to moveables. 1 *Steph. Com.* 156.

THINGUS. L. Lat. [from Sax. *thæng*, or *theing*, a minister.] In old records. A nobleman; a knight or freeman; a thane, (*thanus*.) *Sciatis me concessisse omnibus militibus, et omnibus thingis, et omnibus libere tenentibus, &c.*; know ye that I have granted to all knights, and all thanes, and all free tenants, &c. *Crompt. Jurisd.* 197. *Cowell. Spelman.*

THIRD-BOROW. In old English law. A constable. *Stat.* 28 *Hen. VIII.* c. 10. *Cowell.* Skinner, however, supposes it to mean the third pledge in a decennary. *Blount.*

THIRD NIGHT AWN-HYND. (Sax. *thrid night agen-hine*.) A phrase in the Laws of Edward the Confessor, (c. 17,) descriptive of a person who was entertained a *third night* in the house of another, and was thence called his *domestic*, or the *in-mate* of his family. *Spelman.* The word *agenhine* is written by Bracton, *hogenehyne*, (q. v.) and occurs in the old books in various other forms.

THIRD OFFENCE. The third offence [the law] esteemeth more heinous. *Finch's Law*, b. 1, c. 3, n. 52.

THIRD-PENNY. Sax. [Lat. *tertius denarius comitatús*.] In Saxon law. A third part of the profits of fines and penalties imposed at the county court, which

was among the perquisites enjoyed by the earl. *LL. Edw. Conf.* c. 31, 33. *Cowell. Crabb's Hist.* 17.

THIRDEN-DELE. O. Eng. Third part. Old deed in 1 *And.* 54.

THIRLAGE. In Scotch law. A service by which the possessor of lands was bound to carry his grain to a certain mill to be ground, and to pay a duty therefor called a *multure*. 1 *Forbes' Inst.* part 2, p. 140. Now commuted for an annual payment in grain, by stat. 39 *Geo. III.* c. 55. See *Bell's Dict.*

THOL. In old records. A form of toll, (q. v.) Hence the L. Lat. *tholonium*. A certain portion of grain and other things sold in a market, paid to its owner. *Reg. Priorat. Cokeford*, cited in *Cowell*.

THOLONIUM, *Thollonium*. L. Lat. [from *thol*, (q. v.) or a corrupted form of *telonium*, q. v.] In old English law. Toll; a liberty or privilege of buying and selling within one's own land; (*libertas emendi et vendendi in terrâ suâ*.) *Lamb. Archaion.* fol. 132.

THORNTON. The author of a *Summa*, or abridgment of Bracton, written in the reign of Edward I. Gilbert de Thornton was Chief Justice of the King's Bench in the eighteenth year of this king, and is supposed by Mr. Selden to have written his *summa* by the king's command, or at least under his favor. Selden describes him as "not a bare epitomizer, but sometimes also an excellent interpreter and expositor of Bracton." *Diss. ad Flet.* c. 2, sect. 4. *Id.* c. 3, sect. 1.

THRAVE, *Threave*. Sax. [L. Lat. *trabes, trava*.] In old English law. A measure of corn or grain, consisting of twenty-four sheaves or four shocks, six sheaves to every shock. *Stat.* 2 *Hen. VI.* c. 2. *Cowell.*

THREAD. [L. Lat. *filum*.] A middle line; a line running through the middle of a stream or road. "The *thread* of the stream." Shaw, C. J. 2 *Cushing's R.* 207. 4 *Wisconsin R.* 486, 508. "An abutter runs to the *thread* of the street, unless his deed contains an express provision limiting him to the edge." 26 *Penn. St. R.* 223. See *Filum, Filum aquæ, Filum viæ*.

THRIMSA, *Thrymsa*. Sax. [from *thrim*, three.] A Saxon coin of the value of three shillings. *Lamb. Archaion. Spelman.*

A coin of the value of the third of a shilling, that is, four-pence, or a groat. *Selden's Tit. of Hon.* fol. 604. *Cowell.* 1 *Reeves' Hist.* 15.

**THIRTHING, *Trithing*.** Sax. In Sax-on and old English law. The third part of a county; a division of a county consisting of three or more hundreds. *Cowell*. Corrupted to the modern *riding*, which is still used in Yorkshire. 1 *Bl. Com.* 116.

**THURG TOLL.** See *Toll thorough*.

**THURINGIAN CODE.** [*Lex Aneli-orum Werinorum*.] One of the barbarian codes, as they are termed; supposed by Montesquieu to have been given by Theodoric, King of Austrasia, to the Thuringians, who were his subjects. *Esprit des Lois*, lib. 28, c. 1.

**THUTHINGA.** L. Lat. A tithing. *Bract*. fol. 117.

**TIE.** To bind. "The parson is not tied to find the parish clerk." 1 *Leon*. 94.

**TIEL, *Til*.** L. Fr. [from Lat. *talis*.] Such. *Litt*. sect. 10. *Kelham*.

*Tielr, tier, tieux, tilz*; (plur.) such. *Litt*. sect. 10. *Kelham*.

**TIERCE.** L. Fr. [from Lat. *tertius*.] Third. *Tierce mien*; third hand. *Britt*. c. 120.

**TIGH, *Teage*.** In old records. A close or enclosure; a croft. *Cowell*.

**TIGNUM.** Lat. In the civil law. A beam; the beam of a house. See *Servitus tigni immittendi*.

In a larger sense, every kind of material out of which houses were built. *Appellatione tigni omnis materia significatur, ex qua ædificia fiunt*. *Inst.* 2. 1. 29. See *Dig.* 10. 4. 7, pr. *Id.* 41. 1. 7. 10. *Id.* 47. 3. 1. *Id.* 50. 16. 62.

**TIMBER.** Properly, such trees only as are fit to be used in building, as oak, ash and elm, [and pine in the United States.] 2 *Bl. Com.* 281. 1 *Crabb's Real Prop.* 20, § 26. But some trees may, by the custom of the country, be reckoned timber which are not properly so; as birch, beech, cherry, aspen, willow, white-thorn, holly, black-thorn, horse chestnut, lime, yew, crab and hornbeam. 1 *Crabb's Real Prop.* 20, § 26. *Cruise's Dig.* tit. iii. ch. 2, sect. 7, (White's ed.)

**TIME.** [Lat. *tempus*; Fr. *temps*.] A word expressive both of a precise point or terminus, and of an interval between two points.

When time is to be computed from, or after a certain day, it has been held that that day is to be excluded in the computation, unless it appear that a different computation was intended; for no moment of time

can be said to be after a given day, until that day has expired. See 1 *Pick. R.* 485. 7 *J. J. Marsh. R.* 202. 1 *Blackf. R.* 392. 4 *N. Hamp. R.* 267. 3 *Penn. R.* 200. See *United States Digest*, Time. So, if time is to be computed from any act done, it has been held that the day on which the act is done is to be excluded in the computation, for a day is to be considered as an indivisible point of time, and there can be no distinction between a computation from an act done, and a computation from the day on which the act was done. See 1 *Pick. R.* 485, 494, 495. But there are cases in which the contrary has been held. 9 *Cranch*, 104. 4 *Wash. C. C. R.* 232. It has indeed been said that there is no general rule on this subject, and in computing time from an act or an event, the day is to be inclusive or exclusive, according to the reason of the thing, and the circumstances of the case. 15 *Vesey, Jr.* 248. See 4 *Kent's Com.* 95, note.

In computing the six years mentioned in the statute of limitations, the words of the statute being "within six years next after the cause of action accrued," the day on which the cause of action accrued is to be included. 15 *Mass. R.* 193.

**TIME IMMEMORIAL.** [L. Lat. *tempus immemoriale*.] Time out of memory; time out of mind. Described in the old books as "time whereof the memory of man is not to the contrary," (*tempus cujus contrarium memoria hominum non existit*.) *Litt*. sect. 170, 143, 145. This is apparently taken from the civil law, in which the phrases *quod memoriam excedit, cujus origo memoriam excedit, cujus contrarium memoria non extat*, occur. 1 *Mack. Civ. Law*, 299, § 283, note (e.) *Id.* 300, Kaufmann's note.

There is a singular confusion in the English books between the phrases "time immemorial," or "time out of memory," and the opposite phrase, "time of memory;" both being applied to the same arbitrary period of time commencing from the reign of Richard I. Thus, it has been said so late as the preamble of the statute 2 & 3 Will. IV. c. 71, that the expression "time immemorial," or "time whereof the memory of man runneth not to the contrary," was then, by the law of England, in many cases, considered to include and denote the whole period of time from the reign of Richard I. But this same period is expressly called by Hale and Blackstone "time of memory."

*Hale's Hist. Com. Law*, 4. 2 *Bl. Com.* 31. The expression "time whereof the memory of man runneth not to the contrary" properly refers to the period *anterior* to the reign of Richard I. and is so explained by Mr. Serjeant Stephen in his *New Commentaries*. 1 *Steph. Com.* 45. See *Time of memory*, *Time out of memory*.

**TIME OF MEMORY.** [L. Lat. *tempus memoriæ*; L. Fr. *temps de memorie*.] In English law. Time commencing from the beginning of the reign of Richard I. 2 *Bl. Com.* 31. *Hale's Hist. Com. Law*, 4. "Whatsoever was before that time is before time of memory. What is since that time is, in a legal sense, said to be within or since time of memory." *Id. ibid.*

Lord Coke defines *time of memory* to be "when no man alive hath had any proof to the contrary, nor hath any consuance to the contrary." *Co. Litt.* 86 a, b.

**TIME OUT OF MEMORY.** Time beyond memory; time out of mind; time to which memory does not extend. This phrase being the opposite of *time of memory*, ought to be referred to a time *anterior* to that described as "time of memory." But it has been strangely referred to the *same* period. See *Time immemorial*. What is before time of memory is supposed without a beginning, or at least, such a beginning as the law takes notice of. *Hale's Hist. Com. Law*, 4.

**TIME POLICY.** In the law of insurance. A policy in which the risk is limited to a certain fixed term or period of time specified, instead of being limited by local *termini*. 1 *Arnould on Ins.* 409, (414, Perkins' ed.) A policy on time insures no specific voyage, but covers any voyage within the prescribed time, and the loss and damage the ship may sustain by the perils insured against, within the limited period. 12 *Peters' R.* 378. 3 *Wendell's R.* 283.

**TIMOR.** Lat. In the civil law. Fear. *Vani timoris justa excusatio non est*. The excuse of a groundless fear is not valid. *Dig.* 50. 17. 184.

**TINEL.** L. Fr. A place where justice was administered. *Kelham. Tinel* (or *tynel*) *le roy*; the king's hall. *Id. Blount*.

**TINEMAN.** Sax. In old forest law. A petty officer of the forest who had the care of vert and venison by night, and performed other servile duties. The word occurs in the forest laws of Canute, where it is explained to mean *homo minutus*.

*Const. Canut. R. de Foresta*, c. 4. *Spelman*.

**TINET.** [L. Lat. *tinettum*.] In old records. Brush-wood and thorns for fencing and hedging. *Cart.* 21 *Hen. VI.* *Cowell. Blount*.

**TINEWALD.** The ancient parliament, or annual convention in the Isle of Man, held upon Midsummer-day, at St. John's chapel. *Cowell*.

**TINNELLUS.** L. Lat. In old Scotch law. The sea-mark; high-water mark; tide-mouth. *Skene de Verb. Signif.*

**TIN-PENNY.** [Sax. *teon-penig*, from *teon*, ten.] In Saxon law. A customary tribute paid to the tithing-man, to support the trouble and charge of his office. *Cowell. Chartul. Abbat. Radinges, MS.* cited *ibid.* Dufresne seems to have been mistaken in defining this word to mean a tax of acknowledgment paid for *tin* mines, or the liberty of digging tin.

**TINSEL OF THE FEU.** In Scotch law. The loss of the feu, from allowing two years of feu duty to run into the third unpaid. *Bell's Dict.*

**TIPSTAFF.** [L. Lat. *saiio*, from Sax. *saiol*, or *sagol*, a staff.] In English practice. A ministerial officer who attends the judges while sitting in court, and at their chambers, and is particularly charged with the custody of prisoners, or persons committed to prison. 1 *Tidd's Pr.* 54, 349. See 12 *Mod.* 634. So called from the *staff* he carries, which is painted or ornamented at the extremity, or, according to Cowell, *tipt* with silver. The *tipstiffs* were formerly appointed by the Warden of the Fleet Prison. 1 *Tidd's Pr.* 53.

**TITHES.** [from Sax. *teotha*, tenth; L. Lat. *decimæ*.] In English law. The *tenth* part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 *Bl. Com.* 24. A species of incorporeal hereditament; being an ecclesiastical inheritance collateral to the estate of the land, and due only to an ecclesiastical person by ecclesiastical law. 1 *Crabb's Real Prop.* 151, § 133.

The above definition of Blackstone has been censured as faulty, in its supposing tithe to consist in all cases of the tenth part of the increase *yearly* arising and renewing. 2 *Chitt. Bl. Com.* 24, note. It has been adopted, however, without objection, by Mr. Stephen. 3 *Steph. Com.* 123. Mr. Crabb very succinctly defines tithes to

be the "tenths of the produce of the ground, or of personal industry." 1 *Crabb's Real Prop. ub. sup.*

*Prædial tithes* are such as arise immediately from the ground; as grain of all sorts, hay, wood, fruits, and herbs. *Id. ibid.*

*Mixed tithes* are such as do not arise immediately from the ground, but from things nourished by the ground; as calves, lambs, chickens, colts, milk, cheese, and eggs. *Id. ibid.*

*Personal tithes* are such as arise by the industry of man, being the tenth part of the clear gain, after charges deducted. *Id. ibid.* See 2 *Chitt. Bl. Com.* 24, note.

Tithes are now commuted into a rent charge, the amount of which is annually adjusted according to the average price of corn, [grain.] 1 *Crabb's R. Prop.* 161, et seq. *Wharton's Lex.*

**TITHING.** [Sax. *teothung, theothing*; a company of ten; L. Lat. *tithingum, tithingum, tethinga, theothinga, decenna, decuria.*] In Saxon law. The number or company of ten freeholders, with their families, who all dwelt together and were sureties or free-pledges to the king for the good behavior of each other. *Cowell.* 1 *Bl. Com.* 114. 1 *Reeves' Hist.* 13. Otherwise called a *decennary* or *friborg*, (qq. v.)

**TITHING-MAN.** [Sax. *tienhefod*, head of ten; L. Lat. *decanus friborgi, capitalis plegius; thethingmannus.*] In Saxon law. The head or chief of a tithing; one of the ten freeholders or pledges who composed the tithing, annually appointed to preside over the other nine; a chief pledge, head borough, or borsholder.\* 1 *Bl. Com.* 114. 2 *Inst.* 73. *Spelman*, vocc. *Friborga, Decanus friborgi.*

In modern law,—a constable. "After the introduction of justices of the peace, the offices of constable and *tithing-man* became so similar, that we now regard them as precisely the same." *Willcock on Constables*, Introd.

In New-England,—a parish officer annually elected to preserve good order in the church during divine service, and to make complaint of any disorderly conduct. *Webster.*

**TITHING-PENY**, *Thething peny, Tedinpeni.* In Saxon and old English law. Money paid to the sheriff by the several tithings of his county. *Cowell.*

**TITIUS.** Lat. A Roman name, very commonly used in the civil law, in illustrating rules by examples; like the "John

Stiles," or "John Doe" of the old English books, and the "A. B." of modern treatises. *Si in chartis membranisque tuis carmen vel historiam vel orationem Titius scripserit, hujus corporis non Titius sed tu dominus esse videris*; if Titius shall have written a poem, or a history, or an oration upon your papers or parchments, you and not Titius will be deemed the owner of the *corpus*, i. e. the poem, &c. so written. *Inst.* 2. 1. 33. Titius *filius hæres mihi esto*; let Titius my son be my heir. *Id.* 2. 16, pr. *Dig.* 28. 5. 1, 2, 3.

*Titius* (or *Ticius*) is also sometimes used by Bracton, in his illustrations. *Ticius alienam plantam in solo suo posuit; ipsius erit planta.* Titius has set another man's plant in his ground; the plant shall be his. *Bract.* fol. 10. *Si Titius consul factus fuerit*; if Titius shall be made consul. *Id.* fol. 99 b. But these are obvious quotations from the civil law. Occasionally the name is employed in illustrating the practice of the English courts. Titius *de tali loco, et socii sui justitiiarii itinerantes in tali comitatu*; Titius of such a place, and his companions, justices itinerating in such a county. *Id.* fol. 236 b. But the instances of this are very rare; the letters of the alphabet being generally employed in the examples, as they are in the writs in the Register. *Si feoffavero A. et A. B. et B. C. et sic in infinitum.* *Id.* fol. 81. Sir William Blackstone makes occasional use of this name. 1 *Bl. Com.* 56. 2 *Id.* 10.

**TITLE.** [L. Fr. *tytle*; Lat. *titulus*, q. v.] The lawful cause or ground of possessing that which is ours, (*justa causa possidendi quod nostrum est.*) *Co. Litt.* 345 b.—The means whereby the owner of lands has the just possession of his property. 2 *Bl. Com.* 195.—The means whereby the owner of lands, or other real property, has the just and legal possession and enjoyment of it. *Cruise Dig.* tit. xxix. ch. 1, sect. 2.—The means whereby a man cometh to land. *Co. Litt. ub. sup.* See *Titulus*. These definitions, it will be seen, confine the application of the word to *real* property. In modern law, however, it is constantly applied to personal property also. When two titles concur, the best is preferred. *Finch's Law*, b. 1, c. 4, n. 82.

According to Lord Coke, the word *title* seems strictly to have imported, in the old law of real property, something less than *right*, or, as he describes it, "title properly is, as some say, where a man has a lawful

cause of entry into lands, whereof another is seised, for the which *he can have no action.*" *Co. Litt.* 345 b. 8 *Co.* 153 b. "But legally," he adds, "it includes a right also, for every right is a title, but every title is not such a right for which an action lies." *Co. Litt. ub. sup.* Hale and Finch make a distinction between the terms. See *Hale's Anal.* sect. xxxii. *Finch's Law*, b. 2, ch. 2. In modern practice, however, they are constantly associated together.

A title is further described in the old books as consisting for the most part of *muniments*, which fortify and protect the ground of possession, (*plerumque constat ex munimentis quæ muniunt et tuentur causam.*) 8 *Co.* 153 b. See *Title deeds, Abstract of title.*

**TITLE DEEDS.** Deeds which constitute, or are the evidence of title to lands; muniments of title; the written evidences of ownership of lands. See *Title, Abstract of title, Muniments.*

**TITTLE.** A point used in the spelling or abbreviation of words. Thus, the writing of South. instead of South'. is called a defect of a tittle. *Yearb. T.* 7 Hen. VI. 25. See 6 *Mod.* 273, arg.

**TITULADA.** Span. [from Lat. *titulus*.] In Spanish law. Title. *White's New Recop.* b. 1, tit. 5, c. 3, § 2.

**TITULATUS.** Lat. In canon law. Annexed to a church, (*ecclesiæ ascriptus*.) *Spelman.*

**TITLUS.** A contraction of *titulus*. 1 *Inst. Cler.* 13.

**TITULUS.** Lat. [from *tueri*, to protect.] In the civil law. Title; the source or ground of possession, (*causa possessionis*;) the means whereby possession of a thing is acquired, whether such possession be lawful or not. 1 *Maek. Civ. Law*, 243, § 233. *Id.* 197, § 279. Heineccius makes a distinction between *titulus*, (title,) and *modus acquirendi*, (the manner of acquiring;) describing the former as the remoter, the latter as the proximate or immediate cause of ownership. *Hein. Elem. Jur. Civ.* lib. 2, tit. 1, § 339.

In old English law. Title; ground of ownership of land. *A vero domino ejici potuit et impune, si tempus quod sufficiat pro titulo non intervenerit*; but he may be ejected by the true owner, and with impunity, if a time have not intervened sufficient to constitute a title. *Bract.* fol. 165 b.

A lawful cause or ground of possession. *Titulus est justa causa possidendi id quod*

*nostrum est*; title is the lawful ground of possessing that which is ours. 8 *Co.* 153 b. *Co. Litt.* 345 b.

**TITULUS.** Lat. In old ecclesiastical law. A temple or church; the material edifice, (*ecclesiæ materialis*.) *Spelman.* So called, as *Spelman* supposes, because the priest in charge of it derived therefrom his name and title.

**T'LE.** A contraction of *tale*. 1 *Inst. Cler.* 13.

**T'NSGR'.** A contraction of *transgressio*. 1 *Inst. Cler.* 13.

**TO**, [Lat. *ad, usque ad*,] in expressing a boundary, is a term of exclusion, unless, by necessary implication, manifestly used in a different sense. "I consider the law to be clearly settled, that a boundary on a stream, or *by* a stream, or *'to'* a stream, includes the flats at least to low-water mark, and in many cases to the middle thread of the river. It may be different when the boundary is *'to the bank'*, for in such cases, the boundary is or may be limited to the very bank, and may not extend into the stream, or the flats thereof." *Story, J.* 3 *Sumner's R.* 178.

**TO LANGE AND TO BRED.** A Saxon or old English phrase used in *Bracton*, the meaning of which is very obscure. It occurs in the following passage: *Et sciendum quod statim in ipsa inquisitione, et coram coronatoribus, præsentatur Englescheria, sed diversimodè tamen, secundum diversas consuetudines comitatum. In quibusdam vero comitatibus, presentatur Englescheria, sive mortuus fuerit masculus sive femina, per duos masculos ex parte patris, et per duas feminas ex parte matris, de propinquioribus parentibus interfecti, qui olim dicebantur To lange and To bred.* (And it is to be known that Engleschery is to be presented immediately, at the time of taking the inquest, and before the coroners, but yet in a different manner, according to the different customs of counties. In some counties, Engleschery is presented, whether the dead person be a male or a female, by *two males* on the part of the father, and by *two females* on the part of the mother, of the nearest relatives of the slain person, who were anciently called *To lange* and *To bred*.) *Bract.* fol. 135. The context seems to explain this phrase to mean, "two males and two females." The word "to," at least is clearly expressive of *number*, and *Cowell's* version, "Too long and too broad," is obviously absurd. In

the parallel passage in *Fleta* the phrase does not appear. *Fleta*, lib. 1, c. 30, § 2.

**TO WIT.** [O. Eng. *to wyt*, *to wyte*; Lat. *videlicet*, *scilicet*, *sciendum*; L. Fr. *ascavoir*, *asaver*.] Literally, to know. See *Wit*. A term used to call attention to something particular, or as introductory to a detailed statement of what has been just before mentioned generally. See *Scilicet*.

The ancient use and import of this now familiar expression may be understood from an order of King James III. of Scotland for dissolving the parliament and calling a new one, entered in the records of parliament, 21st February, 1487, which commences as follows: "We do you *to wit*, [that is, we make you to know, or give you to understand] that our sovereign lord, by the advice of his council, has," &c. The same form of expression is used in the New Testament. 2 *Cor.* viii. 1. The declaration of thanks of Henry IV. on being made king of England commences thus: "Sirs, I thank God and zowe [you,] spiritual and temporal, and all the states of the land, and do zowe *to wyte* it es noight my will," &c. 1 *State Trials*, 154.

**TOFT.** [L. Lat. *toftum*.] In old English law. The place where a messuage has stood; the site of a decayed house. *Cowell. Shep. Touch.* (by Preston,) 95.

**TOFTMAN.** [L. Lat. *toftmannus*.] In old English law. The owner of a toft. *Cowell. Spelman.*

**TOFTUM.** L. Lat. In old English law. A toft; the place where a messuage or house has stood. *Glanv.* lib. 8, c. 2. *Reg. Orig.* 2. *Yearb. M.* 1 *Edw. II.* 1. *Spelman.*

**TOIL, Toyle.** In Scotch law. Toll. *Qui habent Toyle et Theme*, &c. *Reg. Maj.* lib. 1, c. 4, § 2.

ΤΟΚΟΣ, Τόκος. Gr. [from *τίκτω*, to beget.] In the Roman law. Interest; the interest of money. *Dig. proœm. (De Conf. Dig.)* § 5.

**TOL, Thol.** Old forms of *Toll*. *Spelman.* See *Toll*. A lord's privilege of buying and selling within his own manor. *LL. Gul. Cong.* l. 3, *Kelham's note*.

A lord's privilege of taking toll of what is bought and sold within his manor. *Id. ibid.*

A lord's exemption from taxes or tolls for what was sold off his own domains. *Id. ibid.*

An acquittance from paying toll in any part of the kingdom. *Id. ibid. Fleta*, lib. 1, c. 47, § 8.

**TOLER, Toller.** L. Fr. [from Lat. *tollere*, q. v.] To take away. *Britt.* c. 38.

*Tolet, tolets, tols, toluz, tolz*; taken away. *Kelham.*

**TOLL.** [Sax. *tol*, *thol*; L. Lat. *tollere*, *tholonium*, *thelonium*, *thelonium*; L. Fr. *tolne*, *toloun*.] In Saxon and old English law. A liberty to buy and sell within the precincts of a manor. *Lambard. Archaion.* fol. 132. *Cowell.* The liberty of having a fair or market. *Spelman.*

A tribute or custom paid for passage. *Cowell.*

A custom or port duty. *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 6.

A lord's right of having tallage of his villeins. *Keilw.* 145.

In modern English law. A reasonable sum due to the lord of a fair or market for things sold there which are tollable. 2 *Crabb's Real Prop.* 350, § 683.

A duty imposed on travellers and goods passing along public roads, bridges, &c. *Brande.*

To **TOLL.** [from L. Fr. *toller*, from Lat. *tollere*, q. v.] In old English law. To take away; to bar, or defeat. To *toll* an entry was to bar or defeat it; to take away the right of entry. 3 *Bl. Com.* 176. Descents were said to *toll* entries. See *Toller*.

**TOLL AND TEAM, Toll and Them, Toll and Tem, Tol and Team.** Sax. Words constantly associated in Saxon and old English grants of liberties to the lords of manors. *Bract.* fol. 56, 104 b, 124 b, 154 b. They appear to have imported the privileges of having a market, and jurisdiction of villeins. See *Team*.

**TOLL-THOROUGH.** In English law. A toll for passing through a highway, or over a ferry or bridge. *Cowell.* A toll paid to a town for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it. *Com. Dig.* Toll, (C.) A toll claimed by an individual where he is bound to repair some particular highway. 3 *Steph. Com.* 257. Called *thurg-toll*. 5 *East*, 2.

**TOLL-TRAVERSE.** In English law. A toll for passing over a private man's ground. *Cowell.* A toll for passing over the private soil of another, or for driving beasts across his ground. *Cro. Eliz.* 710. 1 *Crabb's Real Prop.* 100, § 102. 3 *Steph. Com.* 257.

**TOLL-TURN.** In English law. A toll on beasts returning from a market.

1 *Crabb's Real Prop.* 101, § 102. A toll paid at the return of beasts from fair or market, though they were not sold. *Cowell.*

TOLLER, *Toler.* L. Fr. [from Lat. *tollere*, q. v.] To take away; to bar or defeat. *Discents que tollent entries*; descents which toll or bar entries. *Litt.* sect. 385.

TOLLERE. Lat. In the civil law. To lift up or raise; to elevate; to build up. See *Servitus altius non tollendi*.

To take away; to dissolve or destroy. *Tollitur omnis obligatio solutione ejus quod debetur*; every obligation is dissolved by the payment of that which is due. *Inst.* 3. 30, pr. See *Fleta*, lib. 2, c. 60, § 5.

To put an end to an action. *Calv. Lex.* To quash, or annul a judgment. *Id. Spiegelius.*

To bring up, or educate. *Calv. Lex. Adam's Rom. Ant.* 51.

In old European law. To take away. *Eidem terram suam in loco nuncupante illo, per forciam tulisset*; took away by force from the same, his land in that place named. *Marculf.* lib. 1, c. 28. *De quacunque libet re forciam fecerit, et per vim tulerit*; of whatever thing he shall have done violence, and taken away by force. *L. Ripuar. apud Spelman.*

TOLLUTUS, *Toltus, Tultus.* L. Lat. In old European law. Taken away. Barbarous participles formed from the verb *tollere*, (q. v.) *Quicquid ibi tollutum fuerit*; whatever shall have been there taken. *L. Salic.* tit. 34. *Suum mansum ei tollutum fuisset*; his manse was taken from him. *Chart. Alaman.* 99. *Spelman.*

TOLNE. L. Fr. Toll; toll to a fair or market. *Stat. Westm.* 1, c. 31. 2 *Inst.* 220.

TOLNETUM, *Theolnetum.* L. Lat. In old English law. Toll. *Si sit aliquis qui de concessione domini regis, talem habeat libertatem, sicut Sock & Sack*, Tolnetum, Team, &c.; if there be any one who has, by the grant of the king, such a liberty as Sock and Sack, Toll, Team, &c. *Bract.* fol. 122 b. The same with *theolonium*, (Lat. *vectigal*.) 8 *Co.* 46 b.

A tax, charge or imposition. *Sine omnibus malis tolmetis*; without any manner of evil tolls. *Magna Charta*, c. 30. See *Male toll*.

TOLSESTER, *Tolsaster, Tolcester.* [L.

Lat. *tolcestrum*.] In old English law. A toll or tribute of a sextary or sester of ale, paid to the lords of some manors by their tenants, for liberty to brew and sell ale; a species of excise. *Cowell.*

TOLT. [L. Lat. *tolta*, from *tollere*, to remove.] In old English practice. A writ by which a cause pending in a court-baron was removed to the county court. *Cowell. Termes de la Ley. F. N. B.* 3 *F.* 3 *Bl. Com.* 34, 195. So called, *quia tollit atque eximit causam à curia baronum*, (because it takes away and removes the cause from the court baron.) 3 *Co.* pref. It was a precept directed by the sheriff to his bailiff, commanding him to go to the lord's court, and take away the plaint which was there into his county court. *F. N. B. ub. sup.* 3 *Bl. Com.* Appendix, No. i. sect. 2. It seems now to be disused. 3 *Steph. Com.* 393. See 1 *W. Bl.* 397. See *Tolta*.

TOLTA. L. Lat. In old English law. Tolt; a process for removing a cause from a court-baron. *Spelman.*

A process for removing a cause from the jurisdiction of a temporal court. *Plac. cor. Reg. Term. Pasch.* 22 *Edw.* I. *Rot.* 18. *Spelman.*

Wrong; rapine; extortion; any thing exacted or imposed contrary to right and justice. *Pat.* 48 *Hen.* III. in *Brady's Hist. Eng.* Appendix, 235. See *Mala tolta*.

TONEL. L. Fr. In old English law. A hogshead or tun. *Tonel de vin*; a tun of wine. *Yearb.* H. 6 *Edw.* III. 15. H. 20 *Hen.* VI. 2.

A place of confinement for night-walkers; a round-house. *Kelham.* According to Mr. Barrington it was anciently either an old butt or hogshead, or something built in the shape of one. *Obs. Stat.* 154.

TONNA. L. Lat. In old English law. A ton. *Spelman.*

TONNAGIUM. L. Lat. In old English law. A custom or impost upon wines and other merchandize exported or imported, according to a certain rate per ton. *Spelman. Cowell.*

TONNETIGHT. In old English law. The quantity of a ton or tun, in a ship's freight or bulk, for which tonnage or tunnage was paid to the king. *Pat.* 2 *Ric.* II. *Cowell.*

TONODERACH. In old Scotch law. A thief-taker, (*qui fures exquirat*.) *LL. Kenethi Regis*, § 5. *Spelman.*

**TONSURA.** Lat. [from *tondere*, to shave or clip.] In old English law. A shaving, or polling; the having the crown of the head shaven; tonsure. One of the peculiar badges of a clerk or clergyman. *Habitus et tonsura clericalis*; the clerical habit and tonsure, without which no man originally could be admitted to the privilege of clergy. 2 *Hale's P. C.* 372. 4 *Bl. Com.* 366. See Nov. 5, c. 2. See *Clerical tonsure*.

The clipping of money. *Fleta*, lib. 1, c. 20, §§ 123, 125, 126, 127, 130.

**TONSURE.** [Lat. *tonsura*, q. v.] In old English law. A being shaven; the having the head shaven; a shaven head. 4 *Bl. Com.* 367. See *Tonsura*, *Clerical tonsure*.

**TONSUS.** Lat. [from *tondere*, to shave.] In old European law. Shaven; initiated in holy orders, (*sacris initiatus*.) *Spelman*. "Trimmed with the clerical tonsure." 4 *Bl. Com.* 367. Hence priests were sometimes called in derision, "shavelings."

**TONTINE.** [from *Tonti*, the inventor.] A loan raised on life annuities, with the benefit of survivorships. *Brande*. A loan upon the principles of a *tontine* was proposed to congress by Mr. Hamilton, in his *Report on Public Credit*, Jan. 9, 1790.

**TOP ANNUAL.** In Scotch law. An annual rent out of a house built in a burgh. *Whishaw*. A duty which, from the act 1551, c. 10, appears to have been due from certain lands in Edinburgh, the nature of which is not now known. *Bell's Dict.* See *Skene de Verb. Sign. voc. Annuell*.

**TOR.** Sax. [L. Lat. *torra*.] In old records. A mount or hill. *Cowell*.

**TORAILE.** L. Fr. A kiln. *Yearb. T.* 4 Edw. III. 26.

**TORCENOUSE.** L. Fr. [from *tort*, q. v.] Wrongful; injurious; tortious; distinguished from *damaious*, (q. v.) *En la mercy pur sa torcenouse occupacion*; in mercy for his wrongful occupation. *Britt.* c. 50. *Si la nosaunce soit damaious et torcenouse, adonques, &c. Et si nent torcenouse, uncore fait a souffrer, tout soit ele damaious*; if the nuisance be damageous and tortious, [i. e. productive both of loss and wrong, *damnum cum injuria*,] then, &c. And if not tortious, it must be submitted to, though it may be damageous. *Britt.* c. 61.

**TORCULARIUM.** Lat. In the civil law. A wine-press. *Dig.* 19. 1. 17, pr.

**TORMENTUM.** L. Lat. In old practice. An engine. *Tormentum*, Anglicè vocat' a pistol, onerat' cum pulvere bombardico et glandine plumbea; Ang. charged with gunpowder and one leaden bullet. 2 *State Trials*, 745.

**TORN.** An old form of *tourn*, the sheriff's county court in England. *Mirr.* c. 1, § 16.

**TORNARE.** L. Lat. To turn; to return. *Spelman*.

**TORNEAMENTUM.** L. Lat. In old records. A tournament, or tourney. *Spelman*. *Cowell*, voc. *Turney*.

**TORNETUM.** L. Lat. In old records. A tax or acknowledgment paid to the sheriff, for holding his *tourn*. *Cowell*.

**TORRALE**, *Torralium*. L. Lat. [from *torrere*, to roast, or dry by fire.] In old English and Scotch law. A kiln or malt-house; a house or place where grain or malt was dried. *Spelman*. 3 *Bl. Com.* 235. *Skene de Verb. Sign. voc. Torralium*.

**TORT.** L. Fr. and Eng. [from Lat. *tortus*, *tortum*, twisted, or crooked.] Wrong; injury; the opposite of right, (*droit*.) So called, according to Lord Coke, because it is *wrested*, or crooked, being contrary to that which is right and straight. *Co. Litt.* 158 b. *Celui que droit avera, recovere; et que tort avera, soit puny*; he who shall have the right, shall recover; and he who shall have [done] wrong shall be punished. *Britt.* c. 68. *De son tort demesne*, (q. v.) of his own wrong. *De fait et à tort; de facto* and wrongfully. *Britt.* c. 107. The Spanish *tuerto* (q. v.) has the same sense.

In modern practice, *tort* is constantly used as an English word to denote a wrong or wrongful act, for which an action will lie, as distinguished from a *contract*. 3 *Bl. Com.* 117.

**TORTFEASOR.** L. Fr. and Eng. A wrong-doer; a trespasser. *Cro. Jac.* 383. *Cowell*.

**TORTIOUS.** [L. Fr. *torcenouse*.] Wrongful; having the quality of a *tort*, (q. v.)

**TORTUM.** Lat. [from *torquere*, to twist or crook.] Crooked; twisted; not straight.

Injustice; wrong; the opposite of right, (*rectum*.) *Spelman*.

*Tortura legum pessima*. The torture or wresting of laws is the worst [kind of torture.] *Bacon's Works*, iv. 434.

**TOSCHEODERACH**, *Toschodairach*, *Tochederach*. In old Scotch and Irish law. A serjeant, or serjeant-at-arms, (*serviens curiæ*;) one who executed the process of the courts in summoning parties; a messenger or summoner. *Reg. Mag. lib. 1, c. 6, § 7*. Skene, on this passage, translates the word "ane mair of fee." *Spelman*. In Skene's *De Verborum Significatione* several senses are given.

**TOT**. In old English practice. A word written by the foreign opposer or other officer, opposite to a debt due the king, to denote that it was a *good* debt; which was hence said to be *totted*. *Stat. 42 Edw. III. c. 9. Stat. 1 Edw. VI. c. 15. Cowell*.

**TOT**. L. Fr. [from Lat. *totus*.] All; although. *Kelham*.

*Tot à primer*; as soon; immediately. *Id.*

*Tot en tot*; wholly; entirely. *Id.*

*Tot fois*; *tot voies*; always. *Id.*

*Tot le meins*; full at the least. *Id.*

*Tot outre*; entire. *Id.*

**TOTA CURIA**. L. Lat. In the old reports. The whole court. *Tota curia contra eum*; the whole court against him. *Yearb. M. 9 Hen. VI. 34*.

**TOTAL LOSS**. In insurance law. A loss on account of which the assured is entitled to recover from the underwriter the whole amount of his subscription. 2 *Arnould on Ins.* 990, (993, Perkins' ed.) A total loss, within the meaning of the policy, may arise either by the total destruction of the thing insured, or, if it specifically remains, by such damage to it as renders it of little or no value. 3 *Kent's Com.* 318. A loss is said to be *total*, if the voyage be entirely lost or defeated, or not worth pursuing, and the projected adventure frustrated. *Id. ibid.*

An *absolute* total loss takes place when the subject insured wholly perishes, or its recovery is rendered irretrievably hopeless; and it is one which entitles the assured to claim from the underwriter the whole amount of his subscription, without giving notice of abandonment. 2 *Arnould on Ins.* 990, (993, Perkins' ed.)

A *constructive* total loss takes place when the subject insured is not wholly destroyed, but its destruction is rendered highly probable, and its recovery, though not utterly hopeless, yet exceedingly doubtful. *Id. ibid.* It is a constructive total loss if the thing insured, though ex-

isting in fact, is lost for any beneficial purpose to the owner. In such cases, the insured may abandon all his interest in the subject insured, and all his hopes of recovery, to the insurer, and call upon him to pay as for a total loss. 3 *Kent's Com.* 318. To recover from the insurer in such cases, an abandonment is indispensable. *Id.* 320, 321.

**TOTHUL**. L. Fr. In English law. Tothill Fields, where trials by battel were conducted. *Yearb. M. 4 Edw. III. 12*.

**TOTIDEM VERBIS**. Lat. In so many words.

**TOTIES QUOTIES**. Lat. Literally, so often,—as often. As often as; as often as it shall happen. *Cas. temp. Talbot*, 52. Lord Ellenborough, 6 *M. & S.* 81. Toties quoties *sibi, aut eorum numero majori, conveniens fore videbitur*; as often as it shall seem meet to them, or the greater number of them. 7 *Man. & Gr.* 39.

**TOTIS VIRIBUS**. Lat. With all one's might or power; with all his might; very strenuously. A phrase in the old reports. "Baron Price *totis viribus contra*." *Bunb.* 36. *Id.* 197. "Holt, C. J. *totis viribus contra*." 12 *Mod.* 289.

**TOTUM**. Lat. The whole; all. *Totum præfertur unicuique parti*. The whole is preferred to any single part. 3 *Co.* 41 a, *Ratcliff's case*. The whole blood should inherit before the half blood. *Id. ibid.* For the construction of the word *totum* in the civil law, see *Dig.* 50. 16. 25.

**TOUCH**. In insurance law. To stop at; to stop at a port. If there be liberty granted by the policy to *touch*, or to *touch and stay*, at an intermediate port on the passage, the better opinion now is, that the insured may *trade* there, when consistent with the object and the furtherance of the adventure, by breaking bulk, or by discharging and taking in cargo, provided it produces no unnecessary delay, nor enhances nor varies the risk. 3 *Kent's Com.* 314, and cases there cited. These words were formerly construed more strictly. 1 *Arnould on Ins.* 364, (370, Perkins' ed.)

**TOUCHER**. L. Fr. In old English law. To relate to; to affect; to touch. *Une manere de action y ad pleadable en nostre court, que est appele mixte, par taunt que ele touche la persone v's que la demande est faite, et estre ceo, ele touche la chose demandee*; there is one kind of action pleadable [i. e. that may be brought] in our court, which is called *mixt*, for as much as it

*touches* the person against whom the demand is made; and besides this, it *touches* the thing demanded. *Britt. c. 71. Articles toucheantz nostre corone. Id. c. 29.*

**TOUCHING A DEAD BODY.** In criminal evidence. An old method adopted to ascertain the guilt of a person suspected of murder, by requiring him or her to *touch* the corpse of the murdered person; the belief being that the body would *bleed* at the touch of the murderer. See 11 *How. State Trials*, 1402, 1403. 14 *Id.* 1324, 1326. *Burr. Circ. Evid.* 478, 479.

**TOUCHING THE GOSPELS.** See *Tactis, Tacto, &c.*

**TOURN, Torn, Turn.** [L. Fr. *tourne*; L. Lat. *turnus, turnus*, from *tour*, a circuit, or perambulation.] In old English law. The county criminal court, held before the sheriff twice a year, in every hundred of the kingdom. The *tourn* and the *leet* were originally one; and hence this court is called the turn [i. e. the circuit] of the sheriff to keep a court leet in each respective hundred. 2 *Inst.* 71. *Mirr. c. 1. § 13, 16. Magna Charta, c. 35. Bract. fol. 155. 4 Bl. Com. 273.* Britton observes, that that which is called before the sheriff, the *tour* of the sheriff, (*tour de viscounte*), is called, in the court of a freeman, and in franchises and in hundreds, *view of frank-pledge*, (the old name of the leet.) *Britt. c. 29. See Turnus.*

**TOUT.** (pl. *Touts*.) L. Fr. [from Lat. *totus*.] All.

**TOUT ATRENCHÉ (or ATTRENCHÉ.)** L. Fr. Altogether; entirely. *Yearb. P. 5 Edw. III. 18. P. 8 Edw. III. 7, 8.*

**TOUT TEMPS PRIST.** L. Fr. [L. Lat. *semper paratus*.] Always ready. The emphatic words of the old plea of tender; the defendant alleging that he has always been ready, (*tout temps prist*), and still is ready, (*et uncore prist*), to discharge the debt. *Yearb. M. 3 Hen. VI. 30. P. 11 Hen. VI. 6. 3 Bl. Com. 303. 2 Salk. 622.*

**TOUT UN SOUND.** L. Fr. [L. Lat. *idem sonans*.] All one sound; sounding the same. An expression formerly applied to a name where it sounded in pronunciation so like another, as not to be distinguished. In debt, where the writ was against *Baxter*, and the obligation was *Baxter*, the writ was held good, because it is all one sound in speech, (*eo que il est tout un sound en parlans*.) *Yearb. M. 3 Hen. IV. 4.*

**TOWN.** [L. Fr. *ville*; L. Lat. *villa*; Lat. *oppidum*.] A collection of houses in one neighborhood;\* a generical term, comprehending under it the several species of cities, boroughs and common towns. 1 *Bl. Com.* 115.

In modern law, the term *town* is usually applied to a collection of houses *larger than a village*, but anciently it seems to have comprehended *any* collection of houses, however small. Indeed, Sir William Blackstone supposes the word to have particularly denoted a *tithing*, which was almost the smallest civil division of the kingdom, consisting of *ten* houses or families. 1 *Bl. Com.* 114, 115. "Tithings, towns, or vills," he observes, "are of the same signification in law." *Id.* 114. Lord Coke gives to *towns*, one mark of distinction, viz. the circumstance of having, or having had, in time past, a church and celebration of divine service, sacraments and burials; without which, he observes, it cannot be a town in law. *Co. Litt.* 115 b. But Blackstone regards this as rather an ecclesiastical than a civil distinction. 1 *Bl. Com.* 114. Littleton observes, that every borough is a town, but not *à converso*. *Litt. sect. 171.*

In the United States, the term *town* is generally used to denote those civil divisions or subdivisions of a state which are intermediate between *villages* on the one hand, and *cities* on the other. It is, however, said to denote in Pennsylvania, and some other of the middle states, both a village and a city. *Bouvier*. This is preserving the ancient general sense of the word. In New-York and the eastern states, towns or townships are the subdivisions of counties, including within their limits, villages and towns proper. Webster observes that "in the United States, the circumstance that distinguishes a town from a city, is generally that a city is *incorporated* with special privileges, and a town is not." But in many of the states there are *incorporated* towns which are not cities, and there are also *incorporated villages*.

\* \* \* *Town* is derived by Webster from the Sax. *tun*, from *tynan*, to shut, and originally imported, according to the same authority, a walled or fortified place; a collection of houses enclosed with walls, hedges, or pickets for safety. This is making the radical idea of the word the same with that claimed for *borough*, from *burgus*, (qq. v.) But according to Blackstone, the original import of the word *town* was *tith-*

ing or vill, a neighborhood of *ten* families, which would justify the derivation of the word from the Sax. *tien*, ten; and this accords with the derivation of *borough* from the Sax. *borg*, *borh*, or *borhoe*, the Saxon name of the tithing or decennary. See *Borough*.

The corresponding Latin word *villa* seems to have undergone, in England, changes of signification similar to those of the English *town*. Spelman observes that *villa*, among the Anglo-Saxons, was used in its Roman sense of a farm or private country residence, (*pro prædio unius alicujus in rure*,) provided with suitable buildings for laying up the fruits raised upon it, (*cum idoneis ædibus ad reponendos ejusdem fructus honestato*;) and that it was not originally employed in the sense of a collection or neighborhood of several mansions, (the proper signification of the Latin *oppidum*,) though in the course of time it came to be. *Spelman*, voc. *Villa*. Bracton, in explaining the origin in England, of the word *villa*, throws some light on the primitive meaning of *town*. *Et unde videndum est, quid sit mansio et quid sit villa. Et sciendum quod de jure gentium agris sunt termini positi, ædificia sunt collata sive vicinata, et ex qua collatione fiunt civitates et villæ, et ex pluribus ædificiis collatis et vicinatis, et non ex uno ædificio constructo. Ut si quis in agris unicum faciat ædificium, non erit ibi villa, sed cum ex processu temporis inceperint coadjuvari [coadunari?] et vicinari plura ædificia, incipit esse villa, &c.* (We must see, then, what a mansion is, and what a town or vill is. And it is to be understood that according to the law of nations, [that is, the public or general law of states,] certain limits are marked out in lands, and houses built together, [within them] or erected into a neighborhood, out of which cities and towns are formed, which are thus composed of several buildings erected together, and not of a single edifice. Hence where a man builds a single house in the fields, it will not be a town or vill; but when, in process of time, several buildings have become united together for common safety, and formed into a neighborhood, it begins to be a town, &c.) *Bract.* fol. 211. From what the same author has said in another passage, it would appear that *two* houses standing in the neighborhood of each other would not constitute a *vill*, or town, but any larger number would. See *Bract.* fol. 434.

**TOWN-REEVE.** In English law. The reeve or chief officer of a town. See *Reve*.

**TRA.** In old practice. The mark *Λ* made to show where a clause or word left out, and interlined in writing, should come in. According to the *Instructor Clericalis*, it was derived from the Lat. *trahere*, to draw; "because by it the words left out are signified to be these (where 'tis placed) drawn into writing." 1 *Instr. Cler.* 20.

**TRABES.** Lat. In the civil law. A beam or rafter of a house. *Calv. Lex.*

In old English law. A measure of grain, containing twenty-four sheaves; a thrave. *Spelman*.

**TRACEA.** L. Lat. In old English law. The track or trace of a felon, by which he was pursued, with the hue and cry; a foot-step, hoof-print or wheel-track. *Bract.* fol. 116, 121 b.

**TRACTARE.** Lat. In old English law. To treat, or handle. *Male tractare*; to mal-treat, or ill-treat. *Verberaverunt et male tractaverunt*; beat and ill treated. *Bract.* fol. 57.

To draw or drag (to execution.) *Tractari et suspendi*; to be drawn and hanged. *Fleta*, lib. 1, c. 22, § 6.

**TRADAS IN BALLIUM.** L. Lat. (You deliver to bail.) In old English practice. The name of a writ which might be issued in behalf of a party who, upon the writ *de odio et atia*, had been found to have been maliciously accused of a crime; commanding the sheriff that if the prisoner found twelve good and lawful men of the county who would be mainperners for him, he should *deliver* him *in bail* to those twelve, until the next assize. *Bract.* fol. 123. 1 *Reeves' Hist. Eng. Law*, 252.

**TRADE.** The act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter. *Webster*.

The business which a person has learned and which he carries on for procuring subsistence, or for profit; occupation, particularly mechanical employment; distinguished from the liberal arts and learned professions, and from agriculture. *Id.*

**TRADE MARK.** A distinctive mark used by persons in trade; a distinctive mark, sign or device used by merchants and manufacturers; a mark, sign, device, ticket, wrapper or label put upon manufactured goods to distinguish them from others. See 3 *B. & C.* 541. 2 *Keen*, 213.

**TRADER.** One who trades; one who is engaged in trade, or the business of buying and selling; one who gets a livelihood by buying and selling for gain.\* 2 *Kent's Com.* 389. 2 *Bl. Com.* 476. 2 *Steph. Com.* 195.

The meaning of the word *trader* in the English bankrupt law has been enlarged from time to time by statute, until it now includes the following descriptions of persons: viz. bankers, brokers, persons using the trade of a scrivener, receiving other men's monies or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victualers, keepers of inns, taverns, hotels or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, livery-stable keepers, coach proprietors, carriers, ship-owners, auctioneers, apothecaries, market-gardeners, cow-keepers, brick-makers, alum-makers, lime-burners and millers. *Stat. 6 Geo. IV. c. 16, s. 2. Stat. 5 & 6 Vict. c. 122, s. 10.* 2 *Steph. Com.* 194, note (g).

**TRADERE.** Lat. To deliver; to transfer the possession. In the civil law, this word was properly expressive of the mere fact of transfer, without reference to the right. *Calv. Lex.* But it signified also a transfer of the property. *Inst. 2. 1. 40.*

To betray. Hence *traditor*, a traitor.

**TRADESMAN.** In England, a shop-keeper; a small shop-keeper.

In the United States, a mechanic or artificer of any kind, whose livelihood depends upon the labor of his hands. *Bell, J. 4 Penn. St. (Barr's) R. 472.*

In a larger sense, any person engaged in mechanical pursuits and employments; including manufacturers of every class. *Id.* 473.

**TRADICION.** Span. [from Lat. *traditio*, q. v.] In Spanish law. Delivery. *While's New Recop. b. 2, tit. 2, c. 9.*

**TRADITIO.** Lat. [from *tradere*, to deliver.] In the civil law. Delivery; transfer of possession; a giving possession of a corporeal thing. Heineccius defines it, *modus acquirendi derivativus quo dominus, qui jus et animum alienandi habet, rem corporealem ex justa causa in accipientem transfert*; (a derivative mode of acquiring, by which the owner of a corporeal thing, having the right and the will of aliening it, transfers it for a lawful consideration to

the receiver.) *Heinecc. Elem. Jur. Civ. lib. 2, tit. 1, § 380.*

In old English law. Delivery or livery. *Est traditio de re corporali propria vel aliena, de persona in personam de manu propria vel aliena, sicut procuratoria, dum tamen de voluntate domini, in alterius manum gratuita translatio. Et nihil aliud est traditio, in uno sensu, nisi in possessionem inductio de re corporali, ideo dicitur quod res incorporalis non patitur traditionem; sicut ipsum jus quod rei sive corpori inhæret; et quia non possunt res incorporales possideri sed quasi, ideo traditionem non patiuntur, sed quasi, nec adquiruntur nec retinentur nisi per patientiam et usum;* delivery is the voluntary transfer of one's own or another's corporeal thing, from person to person, out of one's own hand or another's (as of an attorney's, if with the consent of the principal) into the hands of another person. And delivery is nothing else, in one sense, than the induction into possession of a corporeal thing, so called, because an incorporeal thing does not admit of delivery, such as the right itself which inheres in the thing or *corpus*; and because incorporeal things cannot be possessed, but *as it were*, therefore they do not admit of delivery, but *as it were*, nor are they acquired nor retained except by sufferance and use. *Bract. fol. 39 b.* This passage is materially abridged by Blackstone in quoting it. 2 *Bl. Com.* 317. Fleta follows Bracton, but with considerable modification. *Fleta*, lib. 3, c. 15, § 4.

**Traditio loqui facit chartam.** Delivery makes a deed speak. 5 *Co. 1 a, Clayton's case.* Delivery gives effect to the words of a deed. *Id. ibid.*

**Traditio nihil amplius transferre debet vel potest, ad eum qui accipit, quam est apud eum qui tradit.** Delivery ought to, and can, transfer nothing more to him who receives than is with him who delivers. *Dig. 41. 1. 20, pr.*

**TRADITIO CLAVIUM.** Lat. In the civil law. Delivery of keys; a symbolical kind of delivery, by which the ownership of merchandize in a warehouse might be transferred to a buyer. *Inst. 2. 1. 44.*

**TRADITIO REL.** Lat. Delivery of a thing. Lord Ellenborough, 5 *M. & S.* 82.

**TRADITION.** Delivery. A close translation or formation from the Lat. *traditio*, (q. v.) 2 *Bl. Com.* 307.

**TRADITOR.** L. Lat. [from *tradere*, to betray.] In old English law. A traitor; one guilty of high treason. *Fleta*, lib. 1, c. 21, § 8. *Id.* lib. 2, c. 52, § 14.

**TRADITUR IN BALLIUM.** L. Lat. In old practice. Is delivered to bail. Emphatic words of the old Latin bail-piece. 1 *Salk.* 195.

**TRAHENS.** Lat. [from *trahere*, to draw.] In French law. The drawer of a bill. *Story on Bills*, § 12, note.

**TRAHERE.** Lat. In old English law. To draw; as a principal thing does an incident. *Id quod majus est trahit ad se id quod minus est.* That which is greater draws to it that which is less. *Bract.* fol. 175.

To draw or bring in by superior power; to draw a person against his will; to bring into court. *Trahere in placitum*; to draw into plea; to make one a party to a suit; to implead. *A. queritur quod B. trahit eum in placitum*; A. complains that B. draws him into plea. *Reg. Orig.* 34. *Si contra voluntatem trahatur in placitum*; if against his will he be drawn into plea. *Bract.* fol. 402.

To draw to execution. *Trahitur et decollatur*; is drawn and beheaded. 1 *Pitt. Crim. Trials*, part 2, pp. 202, 203.

In the civil law. To put off; to delay or protract. *Calv. Lex.*

**TRAHIR,** *Trair.* L. Fr. [from Lat. *trahere*, q. v.] In old English law. To draw. *Trait et pend*; drawn and hanged. *Yearb.* M. 19 Hen. VI. 102.

**TRAIL-BASTON.** [from Fr. *trail*, to draw, and *baston*, a staff.] Draw-staff. The name given to certain justices appointed by Edward I. with extraordinary powers to try offences, and particularly with authority to inquire into and punish the malpractices of sheriffs, coroners, sub-escators, constables, bailiffs and other officers. *Yearb.* (Add.) T. 2 Edw. III. 14. See *Justices of Trail-baston*. Spelman gives at length a commission of this kind granted by the king in the fifth year of his reign to Roger de Grey, and others his justices for the counties of Essex, Hertfordshire, Cambridgeshire and Huntingdonshire. It was sometimes called *Trebaston*. *Yearb. ub. sup.*

**TRAISTIS.** Sc. In old Scotch law. A roll containing the particular dittay (q. v.) taken up upon malefactors, which, with the *portuous*, (q. v.) is delivered by the justice clerk to the coroner, to the effect that the

persons whose names are contained in the *portuous* may be attached, conform to the dittay contained in the *traistis*. So called, because committed to the *traist*, [trust] faith and credit of the clerks and coroner. *Skene de Verb. Signif.*

**TRAITOROUSLY.** In criminal pleading. An essential word in indictments for treason. The offence must be laid to have been committed *traitorously*. *Wharton's Am. Crim. Law*, 100.

**TRAJECTITIUS.** Lat. [from *trajicere*, to send across.] In the civil law. Sent across the sea. See *Pecunia trajectitia*.

**TRANSACT.** In Scotch law. To compound. Lord Hardwicke, *Ambl.* 185.

**TRANSACTIO.** Lat. [from *transagere*, to finish.] In the civil law. The settlement of a suit or matter in controversy, by the litigating parties, between themselves, without referring it to arbitration. *Hallifax, Anal.* b. 3, c. 8, num. 14. An agreement by which a suit, either pending or about to be commenced, was forborne or discontinued on certain terms. *Calv. Lex.* See *Dig.* 2. 15. *Fleta*, lib. 4, c. 17, § 2.

**TRANSCRIBERE.** Lat. [from *trans*, over or across, and *scribere*, to write.] To write over; to copy; to transcribe.

In the civil law. To transfer; to transfer one's rights to another. *Calv. Lex.*

**TRANSCRIPT.** L. Fr. and Eng. [L. Fr. *transescriit*, from Lat. *transcriptum*, q. v.] In practice. A copy, particularly of a record. This has always been the import of the word, it rarely or never being applied to copies of other writings. *Et le transcript de cel enroulement soit delivere al visconte*; and the transcript of this enrolment shall be delivered to the sheriff. *Britt.* c. 2. *Le transcript del fin.* *Yearb.* M. 9 Edw. III. 2.

**TRANSCRIPTUM.** Lat. In old practice. A transcript. *Reg. Orig.* 169. See *Fleta*, lib. 3, c. 14, § 2.

To **TRANSFER.** [from Lat. *transferre*, q. v.] To carry or pass over; to pass a thing over to another; to convey. Usually applied to the acts of persons, but expressive also of the act or operation of the law.

**TRANSFER.** [Lat. *translatio*.] The passing of a thing or property from one person to another; alienation; conveyance. 2 *Bl. Com.* 294.

**TRANSFERRE.** Lat. [from *trans*, over

or across, and *ferre*, to bring.] In the civil and old English law. To bring over or across; to bring or carry from one place or person to another; to transfer. *Dig.* 50. 17. 11.

According to Lord Coke, this is a more general word than *alienare*, (q. v.) 2 *Inst.* 406. *Transferuntur dominia sine titulo et traditione, per usucapionem, scil. per longam, continuam, et pacificam possessionem*; properties are transferred without title and delivery, by usucapion, that is to say, by long, continued and peaceable possession. *Co. Litt.* 113.

**TRANSFRETARE.** L. Lat. [from *trans*, across, and *fretum*, a strait.] In old English law. To cross a strait, or the strait. Particularly applied to the Straits of Dover. *Reg. Orig.* 193 b. *Fleta*, lib. 4, c. 5, § 17. *Licentia transfretandi*; liberty to cross the strait. *Reg. Orig.* 193 b.

**TRANSFRETATIO.** Lat. [from *transfretare*, q. v.] In old English law. A crossing of the Strait (of Dover;) a passing or sailing over from England to France. The royal passages or voyages to Gascony, Brittany and other parts of France, were so called; and time was sometimes computed from them. *Stat. of Merton*, c. 8. *Stat. of Marlbridge*, c. 9. *Fleta*, lib. 2, c. 66, § 1.

**TRANSGRESSIO.** Lat. [from *transgredi*, to pass or step over.] In old English law. Transgression; violation of law, either by going beyond measure, (*excedendo modum et mensuram*), or doing less than one ought, (*vel faciendo citra debitum*), out of malice and fraud, or by negligence and omission. *Bract.* fol. 101 b. *Transgressio est cum modus non servatur nec mensura*; transgression (or trespass) is when neither moderation nor measure is observed. *Fleta*, lib. 2, c. 1, § 4.

Trespass. *Brevia de transgressione*; writs of trespass. *Reg. Orig.* 92, et seq.

**TRANSIGERE.** Lat. [from *trans*, across or through, and *agere*, to drive.] Literally, to drive through. To press to a conclusion; to dispatch or bring to an end.

In the civil law. To terminate a controversy; to end or settle a matter in litigation. Properly said of a plaintiff who withdrew or discontinued his action, upon a settlement with the defendant; and was thus said *ab actione transire*, to pass from or relinquish his action. *Calv. Lex.*

**TRANSIRE.** Lat. [from *trans*, across or over, and *ire*, to go.] To go, or pass

over; to pass from one thing, person or place to another; to become changed from one thing into another.

**Transit in rem judicatam.** It passes into a matter adjudged; it becomes converted into a *res judicata* or judgment. A contract upon which a judgment is obtained is said to pass *in rem judicatam*. Story, J. 2 *Sumner's R.* 436. Lord Kenyon, 1 *East*, 436. Lord Ellenborough, C. J. 3 *East*, 251. Spencer, C. J. 18 *Johns. R.* 480. When a cause of action has once passed *in rem judicatam*, the defendant and every other person is forever afterwards precluded from availing himself of any pre-existing matter, which might have been insisted upon in bar of the recovery. Van Ness, J. 14 *Johns. R.* 442. This phrase occurs in the old statute of *Articuli Cleri*. *Si aliqua causa vel negotium, cujus cognitio spectat ad forum ecclesiasticum, et coram ecclesiastico iudice fuerit sententialiter terminatum, et transierit in rem judicatam, nec per appellationem fuerit suspensum, &c.*; if any cause or matter, the cognizance whereof belongs to the ecclesiastical court, and which shall have been terminated by sentence before the ecclesiastical judge, and shall have passed into a matter adjudged, and not been suspended by appeal, &c. *Artic. Cleri*, c. 6. Bracton (who is followed by *Fleta*), applies it to a judgment which becomes absolute or final from lapse of time. *Post longum intervallum transit iudicium in auctoritatem rei judicatæ*. *Bract.* fol. 288. *Fleta*, lib. 5, c. 21, § 15.

**Transit terra cum onere.** The land passes with the burden; the land passes with the incumbrance attached to it. Where land passes from one person to another, the covenants created by the original deed of conveyance pass along with it, and bind the present owner or occupier. *Co. Litt.* 231 a. *Shep. Touch.* 178. Applied to the obligation of covenants running with land. *Broom's Max.* 204, 313, [372, 553.]

**TRANSIRE.** L. Lat. In old English law. The name given to a custom-house warrant or let-pass, [permit.] *Stat.* 14 *Car.* II. c. 11. *Cowell.* See *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 11.

**TRANSITORY.** [from Lat. *transitorius*, from *transire*, to pass over.] Passing from place to place; that may pass or be changed from one place to another; not confined to one place; the opposite of local. A *transitory* action is one that may be

brought, or in which the venue may be laid in any county. *Steph. Pl.* 289. 1 *Tidd's Pr.* 427.

**TRANSITURA.** L. Lat. In old European law. A tribute paid for the liberty of passage. *Capit. Carol.* lib. 4, c. 59.

**TRANSITUS.** Lat. [from *transire*, to pass over.] Passage from one place to another; transit. *In transitu*; on the passage, transit or way. 2 *Kent's Com.* 543. "The *transitus* of the goods, and consequently the right of stoppage, is determined by actual delivery to the vendee, or by circumstances which are equivalent to actual delivery." *Id. ibid.* See *Stoppage in transitu*.

**TRANSLADO.** Span. A transcript. See *Traslado*.

**TRANSLATE.** In English law. To transfer. *Hale's Anal.* sect. xxxiii.

**TRANSLATION.** [from Lat. *translatio*, from *transfere*, to transfer.] Transfer; a transferring. "Touching acquisition and translation of estates." *Hale's Anal.* sect. xxxiii. "A translation or transfer of property being thus admitted by law, it became necessary that this transfer should be properly evidenced." 2 *Bl. Com.* 294. This word is closely formed from the *translatio* of the civil law, but is rarely used.

In ecclesiastical law. The removal of a bishop from one diocese to another. *Cowell.* 1 *Wooddes. Lect.* 178.

**TRANSPASSARE.** L. Lat. In old European law. To pass or go through. *L. Alaman.* tit. 82. *Spelman.*

**TRANSPORT.** In old New-York law. A conveyance of land.

**TRANSPORTATION.** [from Lat. *transportatio*, from *transportare*, to carry over.] In English criminal law. The sending of a person out of the kingdom, as a punishment; the sending a convicted criminal into another country; banishment or exile. 1 *Bl. Com.* 137. 3 *Id.* 377.

Transportation is said by Sir W. Blackstone to be "a punishment at present unknown to the common law, and wherever it is now inflicted, it is either by the choice of the criminal himself, to escape a capital punishment, or else by the express direction of some modern act of parliament." 1 *Bl. Com. ub. sup.* It is said by Mr. Barrington to have been first inflicted as a punishment, by statute 39 Eliz. c. 4. *Barr. Obs. Stat.* 445, note [o]. Dr. Wooddeson observes that the first mention of trans-

portation *eo nomine*, is in the statute 18 Car. II. c. 3, s. 2. 2 *Wooddes. Lect.* 301. It is now chiefly regulated by statute 5 Geo. IV. c. 84. 4 *Steph. Com.* 444.

**TRANSMPT.** [from Lat. *transumptus*, from *transumere*, to take from one to another.] In Scotch law. A judicial transcript of a writing; an authorized, authentic copy, as of the evidences of title to land. *Transumpt*s are copies of deeds produced in the action of *transumpt*, collated and signed by the clerk, and then declared by the court to have the same effect with an extracted decree. *Bell's Dict.*

The name of an action brought for the purpose of obtaining such transcripts or copies. 1 *Forbes' Inst.* part 4, p. 116. *Whishaw.*

**TRANSVERSA.** L. Lat. In old English law. A toll or tribute paid for the liberty of passage. *Spelman.*

**TRANSVERSAL.** Cross; oblique. *Hale's Hist. Com. Law.* c. 11.

**TRANSVERSALIS.** Lat. [from *transversus*, across.] Cross; oblique; transverse. See *Linea transversalis*.

**TRASLADO.** Span. In Spanish law. A copy; a sight. *White's New Recop.* l. 3, tit. 7, c. 3. *Id.* c. 5, § 2. *Id.* b. 3, tit. 10, c. 1, § 7.

**TRASSANS.** L. Lat. [from *trassare*, q. v.] Drawing; one who draws. The drawer of a bill of exchange. *Heinecc. de Camb.* c. 6, § 4.

**TRASSARE.** L. Lat. [from Fr. *tracer*, to track.] In old Scotch law. To draw; to pursue by the foot-marks or foot-steps. *Nullus perturbet aut impediēt canem trasantem, aut homines trassantes cum ipso ad sequendum latronem, aut ad capiendum malefactores*; no one shall disturb or hinder a dog drawing, or men drawing with a dog in pursuit of a robber, or for the purpose of taking malefactors. *Reg. Maj.* lib. 4, c. 32. See *Dog-draw*.

In modern European law. To draw a bill of exchange. See *Trassans*, *Trassatus*.

**TRASSATUS.** L. Lat. [from *trassare*, q. v.] One who is drawn, or drawn upon. The drawee of a bill of exchange. *Heinecc. de Camb.* c. 6, §§ 5, 6.

**TRAVAILLER.** L. Fr. To vex, harass, trouble, or disturb; to prosecute. *Kelham.*

To TRAVERSE. [from L. Fr. *traverser*, q. v.] In pleading. To deny. *Steph. Pl.* 52. *Id.* Appendix, Note (25.) To plead "not guilty" to an indictment.

**TRAVERSE.** In pleading. Denial. Pleas in bar are either by way of *traverse*,

or by way of confession and avoidance. *Steph. Pl.* 53.

A particular form of denial; otherwise termed a special or formal traverse. *Id.* 153, 165. *Id.* Appendix, note (25.)

**TRAVERSER.** In pleading. One who traverses or denies. A prisoner or party indicted, so called from his traversing the indictment.

**TRAVERSER.** L. Fr. In old pleading. To traverse; to deny. *Ou le tenaunt purra traverser, et tendre de averrer par l'assise*; where the tenant may traverse and offer to verify by the assise. *Britt. c.* 77. *Si la party le traverse et le dedie*; if the party traverse and deny it. *Id. c.* 86.

**TREASON.** [from L. Fr. *treson*, from *treer*, *trehir*, *trahir*, to betray; O. Sc. *tresone*, *tressoun*; L. Lat. *proditio*.] In criminal law. The offence of attempting to overthrow the government of a state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power. *Webster*.

In England, treason is an offence particularly directed against the person of the sovereign, and consists, (1) in compassing or imagining the death of the king or queen, or their eldest son and heir: (2) in violating the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir: (3) in levying war against the king in his realm: (4) in adhering to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere: and (5) slaying the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. 4 *Steph. Com.* 185—193. 4 *Bl. Com.* 76—84. This definition of treason, or rather this enumeration of acts of treason, was settled by the statute 25 Edward III. c. 2.

In the United States, the definition of treason is fixed by the constitution, it being declared to "consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." *Const. U. S.* Art. III. sect. 3. See *Story on the Const.* (Abr.) §§ 939, 940. The words of this definition are, as Mr. Justice Story observes, copied from the English statute of treason of Edward III. *Id.* § 942. See *supra*. And as to the offence of treason in American law, both against the United States, and the several

states of the Union, see *Wharton's Am. Crim. Law*, b. 7, ch. 1, §§ 2715—2777. See *United States Digest*, Treason.

**TREASURE TROVE.** [L. Fr. *tresor trouve*; L. Fr. *thesaurus inventus*.] Literally, treasure found. Money or coin, gold, silver, plate or bullion found hidden in the earth or other private place, the owner thereof being unknown. 1 *Bl. Com.* 295. *Finch's Law*, b. 2, c. 17. See *Thesaurus*. Called in the Saxon times, *fynderinga*, (q. v.)

**TREATY.** [Lat. *fœdus*.] In international law. An agreement between two or more independent states. *Brande.*—An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns, or the supreme power of each state. *Webster*.

A treaty is, in its nature, a contract between two nations; not a legislative act. It does not generally effect of itself the object to be accomplished, especially so far as its operation is infra-territorial, but is carried into execution by the sovereign power of the respective parties to the instrument. Marshall, C. J. 2 *Peters' R.* 314.

In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial, department, and the legislature must execute the contract before it can become a rule for the court. *Id. ibid.*

**TREBLE COSTS.** In practice. A rate of costs given in certain actions, consisting, according to its technical import, of the common costs, half of these, and half of the latter. 2 *Tidd's Pr.* 988. The word *treble*, in this application, is not understood in its literal sense of thrice the amount of single costs, but signifies merely the addition together of the three sums fixed as above. *Id. ibid.* Treble costs have been abolished in England, by statute 5 & 6 Vict. c. 97.

**TREBLE DAMAGES.** [L. Lat. *damnum triplum*.] In practice. Damages given by statute in certain cases, consisting of the single damages found by the

jury, actually tripled in amount. The usual practice has been for the jury to find the single amount of the damages, and for the court, on motion, to order that amount to be trebled. 2 *Tidd's Pr.* 893, 894. 1 *Burr. Pr.* 237. 1 *Arch. Pr.* 222.

The practice of giving treble damages prevailed among the Ripuarians, from whose code Spelman intimates it may have been originally borrowed. *L. Ripuar.* tit. 11, § 3.

**TREBUCHET**, *Tribuch*. [L. Lat. *trebuchetum*, *terbichetum*; from Celt *tre*, town, and *bucket*, bucket.] In old English law. A tumbrel or cucking-stool. *Cowell*. 4 *Bl. Com.* 169. According to Mr. Barrington, the Fr. *trebuchet* signifies an instrument with which gold is weighed. *Obs. Stat.* 56, note [c.]

**TREBUCHETUM**. L. Lat. A machine anciently used in the siege of towns. *Barr. Obs. Stat.* 54, note [y.]

In old English law. The trebuchet, (q. v.)

**TREE**. (Lat. *arbor*;) distinguished from *lignum*, (wood.) See *Arbor*, *Lignum*.

**TREET**. [L. Fr. *treyt*; Lat. *triticum*.] In old English law. Fine wheat. *Stat.* 51 Hen. III. *Blount. Britt.* c. 40. *Fleta*, lib. 2, c. 9, § 1.

**TRENCH**, *Trenchia*. L. Lat. [from Fr. *trancher*, to cut.] In old English law. A trench, dike, or channel for water. *Reg. Orig.* 252 b. *Cowell*.

**Tres faciunt collegium**. Three make a corporation; three members are requisite to constitute a corporation. *Dig.* 50. 16. 85. 1 *Bl. Com.* 469. A rule of the Roman law, originating in the opinion of Neratius Priscus, as adopted by Marcellus in the first book of his Digests.

**TRESAEL**. L. Fr. A great great grandfather. *Britt.* c. 119. Otherwise written *tresaiel*, and *tresayle*. 3 *Bl. Com.* 186. *Litt.* sect. 20.

**TRESON**. L. Fr. [from *treer*, to draw.] Treason. *Britt.* c. 8.

**TRESOR**. L. Fr. Treasure. *Tresor musce en terre trove*; treasure found hidden in the earth. *Britt.* c. 17. *Tresor musce en terre et trove*; treasure hidden in the earth and found. *Id. ibid.*

**TRESORER**. L. Fr. In old English law. A treasurer. *Britt.* fol. 2 b.

**TRESORIE**. L. Fr. Treasury. *Yearb.* M. 9 Edw. III. 21.

**TRESPASS**. [L. Fr. *trespas*; L. Lat. *transgressio*.] In the largest sense. Any

transgression or offence against the law of nature, of society, or of the country in which we live; whether it relates to a man's person or his property. 3 *Bl. Com.* 165. Any misfeasance, or act of one man, whereby another is injuriously treated or damnified. *Id. ibid.*—Any transgression of the law under treason, felony, or misprision of either. *Staundf. Pl. Cor.* fol. 38. *Cowell*.

In a stricter sense,—an injury committed by one person upon another, with *violence*, actual or implied. The law will imply violence though none is actually used, where the injury is of a *direct* and *immediate* kind, and committed on the person, or tangible and corporeal property of another. Of *actual* violence, an assault and battery is an instance; of *implied*, a peaceable but wrongful entry upon another's land. *Steph. Pl.* 17. See *Finch's Law*, b. 3, c. 6.

In the strictest sense,—an entry on another's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property. 3 *Bl. Com.* 209.

**TRESPASS**. [Fr. *trespas*; Lat. *transgressio*.] In practice. An action which lies to recover damages for some trespass, or injury committed with force either actual or implied, upon the person, or the personal or real property of another. See 1 *Chitt. Pl.* 166, 167.

**TRESPASS DE BONIS ASPORTATIS**. (Trespass for goods carried away.) In practice. The technical name of that species of action of trespass for injuries to personal property, which lies where the injury consists in *carrying away* the goods or property. See 3 *Bl. Com.* 150, 151. 1 *Chitt. Pl.* 171. See *De bonis asportatis*.

**TRESPASS QUARE CLAUSUM FREGIT**. (Trespass wherefore he broke the close.) In practice. The technical name of that species of the action of trespass which lies for unlawfully entering on another's land. 3 *Bl. Com.* 209. See *Quare clausum fregit*.

**TRESPASS VI ET ARMIS**. (Trespass with force and arms.) In practice. The technical name of the action of *trespass* for injuries to the person or property, as distinguished from *trespass on the case*; it being the proper remedy whenever the act complained of is *directly* and *immediately* injurious, or was done with direct violence, which the law will in such case

imply, whether it was actually used or not. Hence the injury is said to have been committed *with force and arms*. See 3 *Bl. Com.* 208. 1 *Chitt. Pl.* 166. See *Vi et armis*, *Force and arms*.

**TRESPASS ON THE CASE.** [L. Fr. *trespas sur le cas*; L. Lat. *transgressio super casum*.] In practice. The technical name of that species of the action of trespass which lies for injuries *unaccompanied with force*, or where the damage sustained is merely *consequential*. See 3 *Bl. Com.* 122, 209. Sometimes termed *case*, and so called from the circumstance of the plaintiff's *case* being anciently set forth in the original writ by which it was commenced.

Mr. Serjeant Stephen observes that it is not easy to give a short and sufficiently comprehensive definition of the scope of this action. He himself defines it to be an action which "lies where a party sues for damages for any wrong or cause of complaint, to which covenant or trespass will not apply." *Steph. Pl.* 17. For the distinction between trespass and case, see 2 *Greenl. Evid.* § 224.

**TRESPASSAUNT.** L. Fr. Passing over; a passer by; a passenger. *A la nosaunce de mesme le chemyn, a peril de trespassauntz*; to the nuisance of the said road, to the peril of passengers. *Britt.* c. 29.

**TRESPASSER.** L. Fr. To pass over; to pass by. See *Trespasaunt*.

To pass away; to die. *Kelham*.

To offend or transgress; to trespass. *Id.*

**TRESPASSER AB INITIO.** A trespasser from the beginning, or from the first act. A term applied to a person who, after lawfully entering on another's premises, commits some wrongful act, which in law is construed to affect and have relation back to his *first entry*, so as to make the whole a trespass. See 3 *Bl. Com.* 213. 3 *Steph. Com.* 498. *Broom's Max.* 140. 8 *Co.* 290, *The Six Carpenters' case*. 1 *Smith's Lead. Cas.* 62, 65.

**TRESTORNARE.** L. Lat. In old English law. To turn aside; to divert a stream from its course. *Aqua trestornata*; a stream diverted from its course. *Bract.* fol. 115, 234 b. *De aquis trestornatis.* *Fleta*, lib. 2, c. 52, § 18.

To turn or alter the course of a road. *Cowell*.

**TRESTOURNER.** L. Fr. In old English law. To turn aside or divert from its course. *Ewe trestourne*; a stream divert-

ed from its channel. *Britt.* c. 61. Finch uses *misturn*, apparently as a translation of this word. "To reduce a water-course that is *misturned*." *Law*, b. 2, c. 2.

**TRESVIRI.** Lat. In the Roman law. Officers who had the charge of prisons, and the execution of condemned criminals. *Calv. Lex*.

**TRET.** L. Fr. [from *treer*, to draw.] A drawing or draught; the drawing of a net. *Britt.* c. 72, 103.

Drawn, as a juror. *Yearb.* H. 3 Hen. VI. 3.

**TRETHINGA.** L. Lat. In old English law. A trithing; the court of a trithing. *Mag. Cart. Johan.* c. 25.

**TREUGA, Treuva, Trevia.** L. Lat. [from Teut. *treue*, true or truth.] A suspension of arms which occasionally took place in the middle ages, putting a stop to private hostilities. *Brande. Spelman*. Otherwise called *Treuga Dei*, the Truce of God, and *Pax Dei*, the Peace of God. *Cowell*. 1 *Robertson's Charles V.* Appendix, Note xxi.

**TREYNE.** L. Fr. In old English law. Drawn; dragged to the scaffold. *Treyne et pendu*; drawn and hanged. *Britt.* c. 23.

**TREYT.** L. Fr. Drawn, or withdrawn, as a juror. Written, also, *treat*. *Cowell*.

**TRIAL.** [from L. Fr. *trier*; L. Lat. *triatio*, q. v.] In a general sense. The formal investigation and decision of a matter in issue between parties, before a competent tribunal. Mr. Stephen supposes the word to have originally been used in this sense, without being confined to matters of *fact*. *Steph. Pl.* Appendix, Note (29.) See *Triare*.

In a stricter sense,—the examination before a competent tribunal, according to the laws of the land, of the *facts* put in issue in a cause, for the purpose of determining such issue. 4 *Mason's R.* 232.—The finding out, by due examination, the *truth* of the point in issue, or question between the parties, whereupon judgment may be given. *Co. Litt.* 124 b.—The examination of the matter of fact in issue in a cause. 3 *Bl. Com.* 330. Trial has been long used to express the investigation and decision of *fact* only. *Steph. Pl.* Appendix, Note (29.) Mr. Stephen calls it the decision of an issue in fact. *Id.* 76, 77.

In the strictest sense,—the examination and decision of an issue in fact, by a *jury*, under the supervision of the court. (*Exactissima litis contestatæ, coram judice, per*

*duodecemvirale sacramentum exagitatio.*) *Spelman.*

**TRIAL AT BAR.** In practice. A trial which takes place before all the judges, at the *bar* of the court in which the action is brought; a trial before the full court in term.\* This mode of trial is allowed only in causes of unusual importance, which require great examination, and cannot be had without leave of the court. 2 *Tidd's Pr.* 747, 748.

**TRIAL AT NISI PRIUS.** In practice. The ordinary kind of trial which takes place at the sittings, assizes or circuit, before a single judge. 2 *Tidd's Pr.* 751, 819. See *Nisi Prius*.

**TRIARE.** L. Lat. [from L. Fr. *trier*, q. v.] In old English law. To try. Bracton uses this word in the general sense of *determine*, making it synonymous with *terminare*. *Dictum est superius, in cujus curia actiones criminales debeant terminari, sive in comitatu vel extra, sive in curia domini regis, vel alibi; nunc autem dicendum, ubi triandæ sunt actiones civiles, quæ sunt in rem vel in personam.* (It has been explained above, in whose court criminal actions ought to be determined, whether in the county court, or out of it, or in the king's court or elsewhere; now we are to consider where civil actions, whether *in rem*, or *in personam*, are to be tried.) *Bract.* fol. 105.

*Triabitur*; shall be tried. *Fleta*, lib. 4, c. 11, § 5. *Triantur*; are tried. *Id.* § 4.

**TRIATIO.** L. Lat. [from *triare*, to try.] In old English law. Trial. *Co. Litt.* 124 b. *Spelman.* *Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam.* Trial ought always to be had where the jurors can have the best information. 7 *Co.* 1, *Bulwer's case*.

*Triatio bilinguis*; trial by a jury *de medietate linguæ*. *Molloy de Jur. Mar.* 448.

**TRIBUERE.** Lat. In the civil law. To give. *Calv. Lex.*

To distribute. See *Actio tributoria*.

**TRIBUNAL.** Lat. In the Roman law. An elevated seat occupied by the prætor, when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and moveable, but afterwards built of stone in the form of a semi-circle. *Adam's Rom. Ant.* 132, 133. Now used as an English word, in the sense of a court or *forum*.

**TRIBUTE.** [from Lat. *tributum*, from

*tribuere*, to give.] A tax; that which is given by a subject to the sovereign of a country. Used in this sense in the old books.

A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter. *Brande.* A sum paid in acknowledgment of dependence or subjection. This is the modern sense of the word.

**TRIBUTUM.** Lat. [from *tribuere*, to give.] In the Roman law. Tribute. *Dig.* 50. 16. 27. 1.

**TRIDUUM.** L. Lat. [from *tres*, three, and *dies*, day.] In old English law. The space of three days. *Fleta*, lib. 1, c. 31, § 7.

**TRIENS.** Lat. In the Roman law. A subdivision of the *as*, containing four *uncie*; the proportion of four-twelfths or one-third. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note (m.)

A copper coin of the value of one-third of the *as*. *Brande.*

In feudal law. Dower, or third. 2 *Bl. Com.* 129.

**TRIGAMUS.** L. Lat. [from Gr. *τρίγamos*, from *τρίς*, three times, and *γάμος*, marriage.] In old English law. One who has been thrice married; one who, at different times and successively, has had three wives; a trigamist. 3 *Inst.* 88. See *Bigamus*.

**TRIGILD.** Sax. [from *thry*, three, and *gelde*, a payment; L. Lat. *trigeldum*.] In Saxon law. A triple gild, geld or payment; three times the value of a thing, paid as a composition or satisfaction. *Spelman*, voc. *Geldum*.

**TRINEPOS.** Lat. In the civil law. A great-grandson's or great-grand-daughter's great-grandson. *Inst.* 3. 6. 4. *Fleta*, lib. 6, c. 2, § 1.

**TRINEPTIS.** Lat. In the civil law. A great-grandson's or great-grand-daughter's great-grand-daughter. *Inst.* 3. 6. 4.

**TRINITY TERM.** One of the four terms of the English courts of common law, beginning on the twenty-second day of May, and ending on the twelfth of June. 3 *Steph. Com.* 562.

**TRINIUMGELDUM.** L. Lat. [Sax. *tri-nigon-geld*.] In old European law. An extraordinary kind of composition for an offence, consisting of *three times nine*, or twenty-seven times the single geld or payment. *Spelman.*

**TRINODA NECESSITAS.** L. Lat. In

Saxon law. A threefold necessity or burden. A term used to denote the three things from contributing to the performance of which no lands were exempted, viz. *pontis reparatio*, (the repair of bridges,) *arcis constructio*, (the building of castles,) *et expeditio contra hostem*, (military service against an enemy.) 1 *Bl. Com.* 263, 357.

TRIORES, *Triers*. In practice. Persons appointed by the court to try challenges of jurors. 1 *Burr. Pr.* 455.

TRIPARTITE. [Lat. *tripartitus*, from *ter*, three times, and *partitus*, divided.] In conveyancing. Of three parts; a term applied to an indenture where the parties to it are arranged in three parts, (a first, second and third part,) and the indenture itself is executed in three parts.

TRIPARTITUS. Lat. In the civil law. Consisting of three parts; threefold. *Inst.* 1. 1. 4.

TRIPLICACION. L. Fr. In old pleading. A rejoinder in pleading; the defendant's answer to the plaintiff's replication. *Britt.* c. 77.

TRIPPLICARE. L. Lat. In old pleading. To rejoin; to answer a plaintiff's replication. *Cum servus replicaverit contra dominum de manumissione, dominus potest triplicare versus eum, quod manumissio non fuit sufficiens nec perfecta*; where the slave has replied against the lord respecting the manumission, [has pleaded a manumission,] the lord may rejoin against him that the manumission was not sufficient nor perfect. *Bract.* fol. 194 b. See *Fleta*, lib. 5, c. 6, § 54.

TRIPPLICATIO. Lat. In the civil law. The answer of a plaintiff (*actor*.) to the rejoinder, (*duplicatio*.) of a defendant, (*reus*.) *Inst.* 4. 14. 2. Corresponding to the *surrejoinder* of the common law. See *Fleta*, lib. 6, c. 36, § 11.

In old pleading. The defendant's answer to the plaintiff's replication; a rejoinder. *Ad replicationem sequitur triplicatio, et ad triplicationem quadruplicatio*; after the replication follows the triplication, (rejoinder,) and after the triplication, the quadruplication, (surrejoinder.) *Bract.* fol. 400 b. See *Fleta*, lib. 6, c. 36, § 10.

TRIPLICAUNT. L. Fr. In old pleading. Rejoining. *A quel le defendaut purra respondre en triplicaunt*; to which the defendant may answer by way of triplication or rejoinder. *Britt.* c. 27.

TRIPLUM. Lat. In the civil law. The triple value of a thing. *Actio in triplum*;

an action for the triple value. *Inst.* 4. 6. 21, 24.

TRIPLY. Sc. In Scotch practice. A pleading corresponding with the Lat. *triplicatio*, from which the term also was taken. 3 *How. St. Trials*, 478, 637, 638.

TRISTRIS, *Tristis*, *Tritis*. L. Lat. In old forest law. A freedom from the duty of attending the lord of a forest when engaged in the chase. *Spelman*.

TRITAVUS. Lat. In the civil law. A great-grandfather's great-grandfather. *Inst.* 3. 6. 4. *Fleta*, lib. 6, c. 2, § 1.

TRITAVIA. L. Lat. In the civil law. A great-grandfather's great-grandmother. *Inst.* 3. 6. 4.

TRITHING. *Triding*. [L. Lat. *trithinga*, *trithingus*, *tritingum*.] In Saxon and old English law. A division of a county, consisting of three hundreds. 1 *Bl. Com.* 116. *Spelman*. *Cowell*. *Fleta*, lib. 2, c. 61, § 23. The third part of a county. *Id.*

A court held for a trithing. *Id.*

The *trithing* mentioned in *Magna Charta*, (c. 36,) seems to have been intended for *tithing*. 2 *Inst.* 73.

TRITHINGREVE. In old English law. An officer who governed a trithing. *Fleta*, lib. 2, c. 61, § 23.

TRITINGUM. L. Lat. In old English law. A trithing; a division of a county consisting of three or four or more hundreds. *Fleta*, lib. 2, c. 61, § 23. Called, also, *tithringum*. *Id. ibid.*

A court held for such a division of a county. *Id. ibid.* In *Fleta*, it is said, that in modern times, hundreds, wapentakes, and trithings are held as one and the same thing. *Id. ibid.*

TRIUMVIRI. *Tresviri*. Lat. In the civil law. (Three men.) Subordinate magistrates appointed for various purposes. The *triumviri capitales* had the charge of prisons and of the execution of criminals. The *triumviri monetales* had the charge of the mint. The *triumviri nocturni* had the charge of the watch and the preventing of fires. *Calv. Lex. Adam's Rom. Ant.* 158.

TRIVERBIAL DAYS. [from Lat. *tria*, three, and *verba*, words.] In the civil law. Judicial or juridical days; days allowed to the prætor for deciding causes; days on which the prætor might speak the three characteristic words of his office, viz. *do*, *dico*, *addico*. *Calv. Lex.* Otherwise called *dies fasti*, (q. v.) 3 *Bl. Com.* 424, and note (w.) See *Do*, *dico*, *addico*.

TR'NS'. A contraction of *transgressio*. *Year Books, passim*.

TRONA. L. Lat. In old English law. A beam for weighing. *Fleta*, lib. 2, c. 12, §§ 2, 15.

TRONAGE. [L. Lat. *tronagium*, from *trona*, a beam for weighing.] In old English law. A custom or toll for the weighing of wool. *Cowell*. 8 Co. 46 b. *Fleta*, lib. 4, c. 1, § 16.

*Tronator*; a weigher. *Cowell*.

TROVE. L. Fr. [from *trover*, q. v.] Found. *De tresor trove, de wrekes trove*; of treasure found, of wrecks found. *Britt.* c. 17. *De chose perdu et trove sur terre*; of a thing lost, and found upon the earth. *Id. ibid.*

TROVER. L. Fr. In old English law. To find. *Home que le trovera en terre*; the man who shall find in the earth. *Britt.* c. 17. *Trover plegges*; to find pledges. *Id.* c. 26. *Trover suerte de suer*; to find surety to sue or prosecute. *Id. ibid.*

TROVER. In practice. An action which lies to recover the value of a personal chattel, or goods, wrongfully converted by another to his own use. So called from the formal allegation in the declaration, that the defendant *found* (from *trover*, to find) the goods in question, being the property of the plaintiff, and that he converted them to his own use. Hence it is sometimes called an action of *trover* and *conversion*.

This action was, in its original, an action of trespass on the case, for recovery of damages against such persons as had actually FOUND another's goods, and refused to deliver them on demand. But from the advantages it possessed in certain respects over *detinue*, it was at length, by a fiction of law, permitted to be brought against any man who had in his possession, by *any means* whatsoever, the personal goods of another, and sold them or used them without the consent of the owner, or refused to deliver them when demanded. 3 Bl. Com. 152. The fact of the *finding* (though the allegation of it is still retained in the declaration) is now wholly immaterial; the injury lying in the *conversion*. *Id. ibid.* See *Browne on Actions*, 424—446.

TROVEURE. L. Fr. [from *trover*, to find.] In old English law. A thing found, such as treasure, wrecks, waifs, &c. *De trouveures*; of things found. The title of the seventeenth chapter of Britton. *En quel meyns teles trouveures sont divenues*;

in what hands such things found have come. *Id. ibid.* LL. Gul. Cong. l. 7.

TROVOUR. L. Fr. [from *trover*, to find.] In old English law. A finder. *Cur tresor musce en terre et trove, volons que soit nostre, et si il soit trove en meer, adonques soit il al trouver*; for treasure hidden in the earth and found, we will that it be ours; and if it be found in the sea, then it shall belong to the finder. *Britt.* c. 17.

TROWE, *Troye*, *Truffe*. L. Fr. Corrupted forms of *trove*, found. *Kelham*.

TROY WEIGHT. [Lat. *pondus Trojæ*.] A weight of twelve ounces to the pound, chiefly used in weighing gold, silver, diamonds, and other articles of jewelry. Supposed by some to be so called from *Troyes*, a city of France; but by others to have reference to the monkish name anciently given to London, of *Troy Novant*, founded on the legend of Brute. Its meaning, according to this derivation, is *London weight*, and it is considered to have been the original weight of the kingdom of England. *Brandé's Dict. vocc. Troy weight, Weight*.

TRUCE. [L. Lat. *treuga*; Lat. *induciæ*.] In international law. A suspension or temporary cessation of hostilities between belligerent powers; an armistice. *Wheaton's Intern. Law*, 442, [470.] A truce does not terminate the war, but it is one of the *commercium belli* which suspends its operations. 1 Kent's Com. 159. *Vattel*, b. 3, c. 16.

The word *truce* seems to be immediately derived from the L. Lat. *treuga*, which, according to Spelman, properly denoted a suspension of hostilities in the *private* wars of the middle ages; (*pactio de pace pro tempore conservanda, proprie inter privatos homines qui capitales olim sectarentur inimicitias*.) The civilians made a distinction between *induciæ* and *treuga*, explaining the former to mean a suspension of arms for a moderate interval, the latter for a longer period. *Calv. Lex*.

TRUCE OF GOD. [L. Lat. *treuga Dei*.] A suspension of arms which occasionally took place in the middle ages, putting a stop to private hostilities. So called because promulgated under the authority of the church. See *Treuga Dei*.

\* \* This kind of truce was frequently promulgated during the middle ages, for the purpose of restraining the hostilities in which the inferior feudatories of the several monarchies of Europe were constantly en-

gaged. Thus, in the county of Roussillon, A. D. 1027, it was determined in a synod of the clergy, that no man should attack his enemy from the hour of nones on Saturday, to the hour of prime on Monday. In 1041, a general truce of God was accepted by the barons, first of Aquitaine, and then of all France, to last from the Wednesday evening of every week to the Monday morning following. This regulation was admitted by Edward the Confessor in England, in 1042, with some additions of great festivals and other days. It was confirmed by many councils, especially the Lateran council of 1179. The observance of it was sworn by knights, burgesses, and peasants of the age of fourteen and upwards, and the penalty of its infringement was excommunication. *Brande.* Dr. Robertson supposes the clause in the form of an English indictment, which, as an aggravation of the criminal's guilt, mentions his having assaulted a person who was "in the peace of God and of the king," to be borrowed from the *Truce or Peace of God* and of the king, (*Treuga* and *Pax Dei*, and *Pax Regis.*) 1 *Rob. Charles V.* Appendix, Note xxi.

TRUE BILL. [L. Lat. *billa vera.*] In criminal practice. The endorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them, and are satisfied of the truth of the accusation. 4 *Bl. Com.* 306.

TRUST. [Lat. *fiducia*, *fides*, *fidei-commisum.*] A confidence; a confidence reposed in one person for the benefit of another; a confidence so reposed, respecting property. See *infra*. "What is a trust? A confidence, for which the party is without remedy, save in a court of equity." Henley, Lord Keeper, in *Burgess v. Wheate*, 1 *W. Bl.* 180.

An obligation or duty, arising out of confidence.\* An obligation upon a person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. *Willis on Trustees*, chap. 1, p. 2. *Stair's Inst.* b. 4, tit. 6, § 2, cited *ibid.*

A right or interest, arising out of confidence.\* An equitable right, title or interest in property, real or personal, distinct from the legal ownership thereof. 2 *Story's Eq. Jur.* 964. An equitable right or interest in property, which another holds in confidence, as the legal owner.\* Both these definitions are essential to make up the complete idea of the word.

\* \* The radical idea of a trust is *confidence*, and this is the word employed by Lord Coke in his definition of a *use*, which has been adopted by Mr. Butler and Mr. Lewin, as the best and most exact definition of a *trust*. *Butler's Co. Litt.* Note 249, lib. 3. *Lewin on Trustees*, 15. See *infra*. The same idea is still more aptly expressed by the Roman term *fidei-commisum*, which literally means a thing *committed to one's faith*; and Justinian explains that it was so called, because it rested upon no obligation of law, (*nullo vinculo juris*,) but only on the *honor* of those to whom it was committed, (*sed tantum pudore eorum qui rogabantur, continebantur.*) *Inst.* 2. 23. 1.

A trust, then, in its simplest elements, is a *confidence* reposed in one person, who is termed the *trustee*, for the benefit of another, who is called the *cestui que trust*; and it is a confidence respecting *property*, which is thus held by the former for the benefit of the latter. Out of this confidence arise two *estates* in the property which is the subject of it; a *legal* estate in the *trustee*, which consists essentially in *obligation*; and an *equitable* estate in the *cestui que trust*, which consists in *right* and *beneficial enjoyment*. So that a trust embraces the two ideas of an *obligation* on the part of one person, and a corresponding *right* on the part of another, which are presented in the definitions above given; both founded upon, and growing out of the radical idea of *confidence*, which has been already explained.

In a trust thus constituted, the legal owner holds the direct and absolute dominion over the property, in the view of the law; but the income, profits or benefits thereof in his hands belong wholly, or in part, to others. The legal estate in the property is thus made subservient to certain uses, benefits or charges in favor of others; and these uses, benefits or charges, constitute the *trusts* which courts of equity will compel the legal owner, as trustee, to perform, in favor of the *cestui que trust*, or beneficiary. 2 *Story's Eq. Jur.* § 964.

Mr. Cruise defines a trust or trust estate to be "a right in equity to take the rents and profits of lands whereof the legal estate is vested in some other person; to compel the person thus seised of the legal estate, who is called the *trustee*, to execute such conveyances of the land as the person entitled to the profits, who is called the *cestui que trust*, shall direct, and to defend the

title to the land." In the mean time, the *cestui que trust*, when in possession, is considered, in a court of law, as tenant at will to the trustee. *Cruise's Dig.* tit. xii. ch. 1, sec. 3. Chancellor Kent expresses the same idea, in more comprehensive terms: "A trust, in the general and enlarged sense, is a right on the part of the *cestui que trust* to receive the profits, and to dispose of the lands in equity." 4 *Kent's Com.* 304.

Lord Coke's definition of a use, which has been already alluded to, may now be given. "A use is a trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land; *scilicet*, that *cestui que use* shall take the profit, and that the terre-tenant shall make an estate, according to his direction." *Co. Litt.* 272 b. Mr. Butler calls this "the best definition of a trust in equity." *Butler's Co. Litt.* Note 249, lib. 3. Mr. Lewin expressly adopts it as the definition of a trust, (though he modifies the latter part of it,) and comments on its different clauses in detail. *Lewin on Trustees*, 15. The language of the definition savours of the technical and antiquated learning of the times, and requires some such commentary as that of Mr. Lewin to understand it fully; but it is valuable as prominently presenting the radical idea of a *confidence*, which is either omitted, or indirectly alluded to, in most of the standard definitions. As to the learning of trusts in general, see 2 *Story's Eq. Jur.* 960—982. 4 *Kent's Com.* 301—313. 1 *Greenleaf's Cruise's Digest*, tit. xii. 1 *Hilliard's Real Prop.* 297—348. *United States Digest*, Uses and Trusts.

As to the original meaning of uses and trusts, Mr. Stephen has very properly remarked, that "the books are rather vague, and not always correct in their account." Blackstone says, that "uses and trusts were in their original of a nature very similar, or rather exactly the same." 2 *Bl. Com.* 327. Mr. Cruise also remarks, that "the words *use* and *trust* were perfectly synonymous." *Cruise's Dig.* tit. xii. ch. 1, sect. 2. There can be no doubt, however, that there might be "trusts" which involved no "uses," in the proper meaning of that term. Thus, Lord Bacon expressly distinguishes a "use" from a "special" or "transitory trust." *Bac. Read. Uses*. Again, it is clear that a "trust" was referable ra-

ther to the person in whom the confidence was reposed; "use" to the person for whose benefit it was reposed. Thus, it is said by Lord Chief Baron Gilbert, "If the use be not a thing annexed to the land, it will be asked of me, what it is; to which I answer, that a use is an equitable right to have the profit of lands, the legal estate whereof is in the feoffee, according to the trust and confidence reposed in him." *Gillb. Us.* (by Sugden,) 374. And again, Lord Bacon remarks: "For a trust *which is the way to a use*, it is exceedingly well defined by a civilian of great understanding, *Fides est obligatio conscientie unius ad intentionem alterius.*" *Bac. Read. Uses.* 1 *Steph. Com.* 329, note (d.) Mr. Stephen observes, that uses and trusts were in their origin closely united, *but not identical*. A trust was the confidence reposed by one man in another, when he invested him with the nominal ownership of property, to be dealt with in some particular manner, or held for some particular person or purpose pointed out. If the trust was of a certain description, viz. to hold land for the benefit of another person, generally, and to let him receive the profits, the sort of interest or right which consequently attached to the latter person was called a *use*, to distinguish it from the nominal ownership or estate of the trustee. 1 *Steph. Com.* 328, 329.

The idea of a trust in the law of England was no doubt originally taken from the *fidei-commisum* (q. v.) of the Roman law; the word itself is of Teutonic origin, and may be traced back to the usages of the ancient Germans. See *Trustis*.

**TRUSTEE.** One who is entrusted with property for the benefit of another. One to whom property is conveyed, or by whom it is held, or required to be held, for the benefit of another.

One who has the legal estate in lands or other property, as distinguished from the *cestui que trust*, or person beneficially interested. The correlative term *trustee*, though used in Scotch law, and in itself very significant and convenient, has not been adopted in England, and is rarely used in the United States. See 9 *Iredell's Law R.* 191.

**TRUSTEE PROCESS.** The name given, in the New England states, to the process of foreign attachment, or garnishment, (q. v.) The strict trustee process extends to the goods, effects and credits of

the principal debtor in the hands of his agent, trustee or debtor, and who, as trustee, is summoned to appear and answer. It does not extend to the real estate in the hands of the trustee. *Cushing on Trustee Process*, 4—16. 2 *Kent's Com.* 403, note. *Drake on Attachment*, § 451. See *United States Digest*, Trustee process.

TRUSTER. In Scotch law. The maker or creator of a trust. 7 *Bell's Appeal Cases*, 297.

TRUSTIS. L. Lat. In old European law. Trust; faith; confidence; fidelity. *Si quis eum occiderit qui in truste dominica est*; if any one slay him who is in his lord's trust, [bound in fealty to his lord.] *L. Salic.* tit. 45, § 4. *Si quis eum occiderit qui in truste regis est*; if any one slay him who is in the king's trust, [who has sworn fealty to the king.] *L. Ripuar.* tit. 11. *Spelman.* *Esprit des Lois*, liv. 30, c. 16, 22.

The vernacular word expressed in these early codes by the barbarous Latin *trustis*, was no doubt the same in form with the modern English *trust*, and as the quotations show, of very similar meaning. It was the root of the word *antrustio*, which denoted a faithful or *trusty* follower. See *Antrustio*.

TRY. [L. Lat. *triare*, q. v.] In practice. To examine or investigate judicially; to examine by means of judicial evidence; to inquire into and test the truth of allegations of fact, by means of judicial evidence adduced for the purpose. The proper function of a court and jury, in cases of issues of fact.

Trial is properly the joint act of judge, jury and counsel; the counsel presenting the allegations and the evidence, and the judge and jury hearing and weighing them. Hence counsel are frequently said to *try* the causes in which they are engaged.

The term *try* is also applied, in criminal cases, to *persons*, as subjects of judicial action. Courts are said to "*try* prisoners" charged with crimes. 1 *W. Bl.* 633.

TU, semper ora, tu protege, tuque labora.

Do thou always pray, do thou protect, and do thou labour. An ancient verse quoted by Lord Bacon, as comprehending the three English tenures of frankalmoign, knight's service, and socage. Arg. in Low's case, *Works*, iv. 235.

TUAS RES TIBI HABETO. Lat. Have (or take) your things to yourself.

The form of words by which, according to the old Roman law, a man divorced his wife. *Dig.* 24. 2. 21. Otherwise expressed, TUAS RES TIBI AGITO. *Id.* See *Tayl. Civ. Law*, 363.

TUBUS, (dimin. TUBULUS.) Lat. In the civil law. A pipe by which smoke was conveyed beyond a wall. *Calv. Lex.*

A pipe for conveying water. *Id.*

TUCHAS. Span. In Spanish law. Objections or exceptions to witnesses. *White's New Recop.* b. 3, tit. 7, c. 10.

TUER. L. Fr. To kill, or slay. *Tue*; slain. *L. Fr. Dict. Rompur' le lees & tuer' la daim'*; broke the leash and killed the doe. *Yearb.* M. 18 Hen. VI. 6.

*Tuerie*; slaughter. *Kelham.*

TUERI. Lat. In the civil law. To protect; to take care of; to preserve. *Calv. Lex.*

To be protected. *Id.*

TUERTO. Span. [from Lat. *tortum*.] In Spanish law. Tort. *Las Partidas*, part 7, tit. 6, l. 5.

TUGURIUM. Lat. [from *tectum*, a covering.] In the civil law. A hut or cot; a small rude building for sheltering cattle. *Calv. Lex.*

A rude or rustic dwelling. *Dig.* 50. 16. 180. A small country house; a cottage. *Calv. Lex.*

TUICION. L. Fr. [from Lat. *tuitio*.] Protection. *Et prient tuicion del esglise*; and pray protection of the church. *Britt.* c. 16.

TUITIO. Lat. [from *tueri*, to protect.] In the civil law. Protection; defence. *Spiegelius.*

TUITISCUS, *Theutiscus*, *Theotiscus*. L. Lat. [from Sax. *theod*, people.] In old European law. Of the people, or native population; the language of a country. *Tuitiscè*; in the vernacular. *Spelman*, voc. *Suonpouch*.

TULIT. Lat. [from *ferre*, to bring.] In old practice. Brought. *Tulit breve de recto*; brought a writ of right. *Yearb.* M. 1 Edw. II. 1.

TULLIANUM. Lat. In the Roman law. That part of a prison which was under ground. Supposed to be so called from Servius Tullius, who built that part of the first prison in Rome. *Adam's Rom. Ant.* 290.

TUMBRELL. [L. Fr. *tumberell*; L. Lat. *tumbrellum*, *timbrellum*, *tymborale*.] In old English law. The ancient name of the castigatory, or trebuchet, (qq. v.) An

engine for the correction or punishment of scolds and unquiet women. *Lamb. Eirenarch.* lib. 1, c. 12. It was used, however, for other purposes, also, and ranked with the pillory and other infamous punishments of the times. Bracton speaks of the *pœna pilloralis et tymboralis* as causing both suffering and disgrace. *Bract.* fol. 104 b. Britton and Fleta associate the gallows, pillory and tumbrell together. *Britt.* c. 20. *Fleta*, lib. 2, c. 12, §§ 18, 29. The pillory and tumbrell are mentioned in similar connection in an old manuscript of the laws, statutes and customs of the borough-town of Montgomery, cited in Cowell.

TUN. Sax. [L. Lat. *tuna*.] A farm or town, (*prædium, villa*.) A common termination in the names of towns in England, now written *ton*. Spelman distinguishes this from *ham*, a similar termination, by the circumstance that *tun* properly signified a rural estate, (*villa rustica*), and *ham*, a chief house or mansion, (answering to the *villa urbana* of the Romans;) the former, in other words, signifying the teneemental lands of a lordship; the latter, the lord's manor house and demesnes.

TUNC. Lat. Then. The correlative of *nunc*, (now.) *Dyer*, 18 a.

TUNGINUS. L. Lat. In old European law. A judge who ranked next to the count, (*comes*.) Answering, as Spelman supposes, to the *thegn* or *thanus* of the old Anglo-Saxon laws. *Tunginus vel centenarius malleum judicent*; thethane or centenary shall hold a court. *L. Salic.* tit. 48, § 1. *Si quis de parentela tollere se voluerit, in mallo ante tunginum aut centenarium ambulet, et ibi quatuor fustes alvino super caput suum franget, &c.*; if any one desires to remove or relieve himself from parentage, he shall appear in court before thethane or centenary, and there break four alder staves over his head, &c. *Id.* tit. 63.

TUNGREVE. Sax. [from *tun*, town, and *greve, gerefa*, reeve; L. Lat. *tungrevius*.] In Saxon law. The reeve or chief officer of a town; a town-reeve. *Spelman*, vocc. *Tungrevius, Leda*.

TURBA. Lat. [from Gr. *θορυβῆν*, to be in disorder.] In the civil law. A multitude, a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least. *Dig.* 47. 8. 4. 2, 3. *Calv. Lex. Hotoman. Prateus. Spiegelius*.

TURBA. L. Lat. [O. Fr. *tourbe*.] In

old European law. A number of old men to whom judges in the middle ages were sometimes obliged to refer dubious cases, that they might inform them what was the practice or custom with regard to the point to be determined. Dr. Robertson mentions this as a mode of judicial determination established in the middle ages, which affords the clearest proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary customs, were often at a loss how to find out the facts and principles, according to which they were bound to decide. It was called *Enqueste par tourbe*. 1 *Rob. Charles V.* Appendix, No. xxv. *Ducange*, voc. *Turba*.

TURBA, *Turbus*. L. Lat. [from Sax. *tyrb*, a turf, or piece cut out of the ground.] In old English law. A turf or sod, (*cæspes*;) a cut of earth, (*terricidium*.) *Spelman*. Two kinds of *turba* are mentioned by Spelman; one cut or sliced from the surface of the ground; the other dug out of it: both being used for fuel. See *Turbaria*.

TURBARE. Lat. In the civil law. To disturb; to confound; to mix together. *Calv. Lex*.

TURBARE. L. Lat. In old English law. To cut or dig turf. *Spelman*, voc. *Turba*.

TURBARIA. L. Lat. In old English law. The soil or ground from which turf is dug; a turbary or turfery. *Fleta*, lib. 2, c. 41, § 2. *Cum duo vel plures teneant boscum, turbariam, piscariam, vel alia hujusmodi in communi absque hoc quod aliquis sciat suum separale*; when two or more hold a wood, a turbary, a fishery, or other such thing in common, without this that any one knows [without any one's knowing] his several. *Stat. Westm.* 2, c. 22. John de Gray, Bishop of Norwich, granted the monks of that church the liberty of digging turves in his turbaries, (*ut fodiant turbas in turbariis ejus*), for the necessary uses of their house at Elmham, without waste of the turbary, (*sine wasto turbarii*) and without any sale of the turves. *Registr. Eccles. Norwic.* cited in *Cowell*.

TURBARY. [L. Lat. *turbaria*, from *turba*, a turf.] In English law. A right or liberty of digging turf. A right to dig turves on another man's ground. *Kitchin*, fol. 94. *Cowell*. See *Common of Turbary, Turbaria*.

The ground where turves are dug. *Cowell.*

TURN. See *Tourn.*

TURNPIKE ROADS are distinguished from *highways* in general, by the manner in which the expense attending their maintenance is defrayed, viz. by tolls collected from passengers. 3 *Steph. Com.* 259. A turnpike road, however, is regarded, in law, as a public highway, established by public authority for public use, and is to be regarded as a public easement, and not as private property. Shaw, C. J. 16 *Pick. R.* 177.

TURNUS. L. Lat. In old English law. The turn; the sheriff's court, so called. See *Tourn.* *Nec aliquis vicecomes vel ballivus faciat turnum suum per hundredum, nisi bis in anno, et non nisi in loco debito et consueto, videlicet, semel post Pascham, et iterum post festum Sancti Michaelis;* nor shall any sheriff or bailiff make his turn through the hundred, unless twice in a year, and not unless in the due and accustomed place, to wit, once after Easter, and again after the feast of St. Michael. *Mag. Cart.* 9 Hen. III. c. 42. *Fleta*, lib. 2, c. 52, §§ 1, 2. *Item pertinet ad vicecomitem visus franciplegii in turnis suis duobus, singulis annis, per hundreda [et] wapentakya faciendis, et ideo qualiter debent fieri turni videndum est;* the view of frank-pledge also belongs to the sheriff in making his two turns every year through the hundreds and wapentakes, and therefore it is to be seen how the turns are to be made. *Bract.* fol. 155.

TURPIS. Lat. In the civil law. Base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons. *Calv. Lex.*

*Turpis arbiter;* a bribed or corrupted judge. *Id.*

*Turpis persona;* an infamous person. *Id.*

*Turpe iudicium;* a sentence of infamy. *Id.*

*Turpe lucrum;* unlawful gain. *Id.*

*Turpis est pars quæ non convenit [congruit] cum suo toto.* The part which does not agree with its whole, is of mean account, [entitled to small or no consideration.] *Plowd.* 101. *Shep. Touch.* 87. *Bacon's Works*, iv. 269.

TURPIS CAUSA. Lat. A base or immoral consideration; an iniquitous, or unlawful consideration. *Ex turpi causa non oritur actio.* Out of an immoral consideration

no action arises. *Broom's Max.* 350. "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appear to arise *ex turpi causâ*, or the transgression of a positive law of this country, there the court says he has no right to be assisted." Lord Mansfield, C. J. *Coup.* 343.

TURPIS CONTRACTUS. Lat. An immoral or iniquitous contract. *Ex turpi contractu actio non oritur.* Out of an immoral contract no action arises. 2 *Kent's Com.* 466. It is a general rule that an agreement cannot be made the subject of an action, if it can be impeached on the grounds of dishonesty or as being opposed to public policy,—if it be either *contra bonos mores*, or forbidden by the law. Lord Kenyon, C. J. 6 *Term R.* 16. "The reason why the common law says such contracts are void, is for the public good: *you shall not stipulate for iniquity.* All writers upon our law agree in this,—no polluted hand shall touch the pure fountains of justice." Wilmot, C. J. 2 *Wils.* 341, 350.

TURPITUDO. Lat. [from *turpis*, q. v.] Baseness; infamy; immorality; turpitude. *Nemo allegans suam turpitudinem est audiendus*, (q. v.) No one alleging his own baseness or infamy, is to be heard; no man is allowed to say in court, that he has done an infamous act. *Calv. Lex.*

TURRIS. Lat. In old English law. A tower; the tower; the Tower of London. *Fleta*, lib. 6, c. 11, §§ 6, 7.

TUS. L. Fr. All; a corruption of *touts*. *Tus jours;* forever. *Kelham.*

TUT. L. Fr. All; a corruption of *tout*. *Tut le reaume;* the whole kingdom. *Kelham.*

TUTELA. Lat. [from *tueri*, to protect or guard.] In the civil law. Tutelage; that species of guardianship which continued to the age of puberty; the guardian being called *tutor*, and the ward, *pupillus*. 1 *Domat, Civ. Law*, b. 2, tit. 1, p. 260. A guardianship of the person. *Calv. Lex.* *Est autem tutela (ut Servius definivit,) vis ac potestas in capite libero, ad tuendum eum qui per ætatem se defendere nequit, jure civili data ac permissa;* tutelage, (as Servius has defined it,) is an authority and power given, and permitted by the civil law over a free person, [or person *sui juris*] for the purpose of protecting him who, by

reason of his [tender] age, is unable to protect himself. *Inst.* 1. 13. 1. This is taken, with some variation, from the definition of Paulus in the Digests. *Dig.* 26. 1. 1, pr. *Impuberes autem in tutela esse, naturali juri conveniens est; ut is qui perfectæ ætatis non sit, alterius tutela regatur;* that persons under puberty should be in, [or under] tutelage, is agreeable to the law of nature, [which dictates] that one who is not of perfect age should be under the government and protection of another. *Inst.* 1. 21. 6. *Pupilli pupillæque, cum puberes esse cæperint à tutela liberantur;* pupils [wards,] both male and female, when they arrive at puberty, are freed from tutelage. *Id.* 1. 22, pr.

**TUTELA LEGITIMA.** Lat. In the civil law. Legal tutelage; tutelage created by act of law, as where none had been created by testament. *Inst.* 1. 15, pr. This resembles the modern appointment of guardian by the court of chancery. *Cooper's Notes*, \*446, 447. *Hallifax, Anal.* b. 1, c. 9, num. 6.

**TUTELA TESTAMENTARIA.** Lat. In the civil law. Testamentary tutelage or guardianship; that kind of tutelage which was created by will. *Dig.* 26. 2. *Calv. Lex.* *Hallifax, Anal.* b. 1, c. 9, num. 3, 4. *Inst.* 1. 13. 3. *Id.* 1. 14.

**TUTELÆ ACTIO.** Lat. In the civil law. An action of tutelage; an action which lay for a ward or pupil, (*pupillus*), on the termination of tutelage, against the tutor or guardian, to compel an account. *Inst.* 1. 21. 7. *Dig.* 27. 3, 4. *Calv. Lex.* Enumerated by Bracton and Fleta, among actions *ex quasi contractû.* *Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

**TUTELAM REDDERE.** Lat. In the civil law. To render an account of tutelage, (*tutelæ rationes reddere*.) *Calv. Lex.* *Tutelam repossere;* to demand an account of tutelage. *Id.*

**Tutius erratur ex parte mitiori.** It is safer to err on the milder side. *Branch's Pr.* 3 *Inst.* 220.

**Tutius semper est errare acquietando, quam in puniendo; ex parte misericordiæ quam ex parte justitiæ.** It is always safer to err in acquitting than in punishing;—on the side of mercy, than on the side of justice. *Branch's Pr.* 2 *Hale's P. C.* 290.

**TUTOR.** Lat. [from *tueri*, to protect.] In the civil law. A guardian who had the charge of persons under the age of puberty, and who had also the care of their

affairs. *Inst.* 1. 13. 1. *Id.* 1. 20. 7. See *Tutela.* *Tutores autem sunt qui eam vim ac potestatem habent, [i. e. vim ac potestatem in capite libero, ad tuendum eum qui per ætatem se defendere nequit, jure civili data ac permissa;] exque ipsa re nomen acceperunt. Itaque appellantur tutores, quasi tutores ac defensores.* (Tutors are those who have such power and authority, [i. e. a power and authority given by law over a free person, for the purpose of protecting him who, by reason of his age, cannot protect himself;] and they have taken their name from that same circumstance. Accordingly they are called *tutores* [tutors,] being, as it were, *tutores* [protectors, from *tueri*, to protect,] and defenders.) *Inst.* 1. 13. 2. This definition is taken, with some variations, from that of Paulus in the Digests. *Dig.* 26. 1. 1. 1.

In old English law. A guardian. Bracton uses *tutor* and *curator* indifferently, without observing the distinction made between these terms by the civil law; and *custos* is employed in the same sense. *Bract.* fol. 28, 28 b. So *tutrix* and *curatrix.* *Id. ibid.*

In Scotch law, *tutor* is used in the sense of the civil law, as distinguished from *curator.* *Ersk. Pr.* b. 1, tit. 7. *Bell's Dict.* And the same distinction (*tuteur* and *curateur*) is adopted in the Civil Code of Louisiana. Art. 263.

**TUTRIX.** Lat. In old English law. A female tutor or guardian. *Bract.* fol. 28 b.

**TUZ.** L. Fr. All; a corruption of *touts.* *Tuz ceuz;* all those. *Kelham. Encontre tuz iceaus;* against all those. *Artic. sup. Cart.*

**TWA NIGHT GEST.** Sax. On the second night, a guest. According to the laws of Edward the Confessor, a person who was entertained in the house of another, was called and to be considered, on the *second night* of his entertainment, a guest. *LL. Edw. Conf.* c. 17. *Spelman*, voc. *Homehyne.* Expressed in the Latin of Bracton, *secunda nocte, gust.* *Bract.* fol. 124 b. In the French of Britton, *l'autre nuyt geste.* *Britt.* c. 12. Bracton speaks of this regulation as an ancient custom.

**TWAITE.** In old English law. A wood grubbed up, and turned to arable land. *Co. Litt.* 4 b.

**TWELFHENDE,** *Twelfthind, Twelfthundemen.* Sax. [from *twelf*, twelve, and

*hund, hund, a hundred; L. Lat. twelf-hindi.]* The highest order of persons under the Saxon government, who were valued or rated at twelve hundred shillings. *Cowell.*

**TWELVE-MONTH,** in the singular number, includes all the year; but *twelve months* are to be computed according to twenty-eight days for every month. 6 Co. 62. See *Month.*

**TWELVE TABLES.** [Lat. *Leges Duodecim Tabularum.*] A celebrated body of Roman laws, framed by decemvirs appointed A. U. C. 303, on the return of three deputies or commissioners who had been sent to Greece to examine into foreign laws and institutions. They consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. 1 *Kent's Com.* 521. This code has been preserved to modern times, only in fragments, which have been collected and edited by Gothofred, Gravina and other writers. See 1 *Kent's Com.* 521—525, note, where a valuable summary of it is given.

**TWICE IN JEOPARDY.** See *Once in jeopardy.* 1 *Kent's Com.* 611, note, (7th ed.) *Wharton's Am. Crim. Law,* § 573, *et seq.*

**TWIGILD.** Sax. [from *twy*, two, and *gild*, or *geld*, a payment.] In Saxon law. A double payment, or composition for one offence. *Spelman.*

**TYHTLAN.** Sax. In Saxon law. An accusation, impeachment or charge of any offence. *Nec componat aliquis pro ulla tyhtlan, si non intersit testimonium præpositi regis;* nor shall any one compound for any accusation, unless there be present evidence on behalf of the king. *LL. Ethelr.* c. 2. *Cowell.*

**TYLWITH.** Brit. [from *tyl*, the site of a house, or *tylath*, a beam in a building.] A tribe or family branching or issuing out of another. *Cowell.*

**TYMBORALE.** L. Lat. In old English law. The tumbrell. *Bract.* fol. 104 b. See *Tumbrell.*

## U.

U. L. Fr. Or. *LL. Gul. Conq.* l. 6.

U. R. An abbreviation of *Uti rogas*, (q. v.)

**UBERRIMA FIDES.** Lat. The most abundant or abounding good faith. An expressive phrase of the Roman law, frequently used in the modern books. 1 *Story's Eq. Jur.* § 317. "The law requires *uberrima fides* in the formation of the contract" [of insurance.] 3 *Kent's Com.* 283. Marine insurance is emphatically a contract—*uberrimæ fidei*, of the most abounding good faith. 2 *Duer on Ins.* 380.

**UBI.** Lat. Where, (*in quo loco.*) An adverb of place. *Calv. Lex.*

Where, in the sense of *when*, (*quando;*) expressive of circumstance. See the maxims *infra.*

**Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest.** Where any thing is granted, that also is granted without which the thing cannot exist. *Broom's Max.* [364.]

**Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum.** Where any thing is impeded by one single cause, if that be removed, the impediment is removed. *Branch's Pr.* citing 5 Co. 77 a, *Paget's case.* This maxim in the passage referred to reads, *Cum aliquid, &c.*

**Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium.** Where the ordinary remedy fails, recourse must be had to an extraordinary one. 4 Co. 92 b, *Slade's case.*

**Ubi eadem ratio, ibi idem jus.** Where the reason is the same, there the law is the same. 7 Co. 18 b, *Calvin's case.* Like reason doth make like law. *Co. Litt.* 10 a. *Broom's Max.* 64, [114, 115.] Where the reason of a rule established in one case is found to apply to another case, the same rule will be established in the latter. See *Id.* 65, 66. The older and fuller form of this maxim was, *Ubi eadem est ratio, ibi idem jus erit.* *Fleta*, lib. 3, c. 16, § 34. Another form was, *Ubi eadem ratio, ibi idem jus esse debet.* Where the same reason is, there the same law ought to be. *Yearb.* M. 19 Hen. VI. 38.

**Ubi culpa est, ibi pœna subesse debet.** Where the crime is committed, there ought the punishment to be undergone. *Jenk. Cent.* 325.

**Ubi damna dantur, victus victori in expensis condemnari debet.** Where damages are given, the vanquished party ought to be condemned in costs to the victor. 2 *Inst.* 289.

**Ubi factum nullum, ibi fortia nulla.**

Where there is no fact, there can be no force; where there is no principal fact or act done, there can be no accessory act. 4 Co. 42 b, *Syer's case*. The significance of this maxim turns upon the technical meaning of the words *factum* and *fortia* in the old law. See *Factum, Fortia*. The maxim itself appears to have been taken from Bracton. *Ubi factum, ibi poterit esse forcia quandoquē, sed nunquam forcia sine facto*. Bract. fol. 128. In Branch's *Principia*, *fortia* has been converted into *sortia*, and the maxim translated, "Where there is no deed committed, there can be no consequences;" and the error and translation have both been followed in Wharton's *Lexicon*.

*Ubi jus, ibi remedium*. Where there is a right, there is a remedy; where the law gives a right, it gives a remedy for the recovery of such right.\* *Broom's Max.* 91, [146.] There is no wrong without a remedy. *Id. ibid.* If a man has a right, he must have a means to vindicate and maintain it, and a remedy, if he is injured in the exercise and enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal. Holt, C. J. 2 *Ld. Raym.* 953. If the law confer a right, it will also confer a remedy. Lord Kenyon, C. J. 1 *East*, 220. This maxim has been considered so valuable, that it gave occasion for the first invention of that form of action called an action *on the case*. *Broom's Max. ub. sup.*

*Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima*. Where the law compels a man to show cause, it is necessary that the cause be just and lawful. 2 *Inst.* 289.

*Ubi lex est specialis, et ratio ejus generalis; generaliter accipienda est*. Where a law is special, but the reason of it general, it is to be taken generally. 2 *Inst.* 43.

*Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, neither ought we to distinguish. 7 Co. 5 b, *Calvin's case*. Holt, C. J. 12 *Mod.* 293.

*Ubi major pars est, ibi totum*. Where the greater part is, there the whole is. *Moor*, 578. *Ubi major pars, ibi tota*. In corporations, the majority governs. 10 *Mod.* 75.

*Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia*.

Where there is no positive law, [applicable to a case,] it must rest in the discretion of the judge, or it must be determined by the principles of similar cases. *Ellesm. Postn.* 41. *Branch's Pr.*

*Ubi non est condendi auctoritas, ibi non est parendi necessitas*. Where there is no authority for establishing a rule, there is no necessity of obeying it. *Davies' R.* 69.

*Ubi non est lex, ibi non est transgressio, quoad mundum*. Where there is no law, there is no transgression, as far as relates to the world. 4 Co. 16 b. This seems to be an application of the text, *Romans*, iv. 15.

*Ubi non est principalis, non potest esse accessorius*. Where there is no principal there can be no accessory. 4 Co. 43 b, *Syer's case*.

*Ubi nulla est conjectura quæ ducat alio, verba intelligenda sunt ex proprietate non grammatica, sed populari ex usu*. Where there is nothing to call for a different construction, [the] words [of an instrument] are to be understood, not according to their strict grammatical meaning, but according to their popular and ordinary sense. *Grotius de Jure Belli ac Pacis*, lib. 2, c. 16, § 2. Mr. Duer observes, in reference to this maxim, that the term *conjectura* is constantly used by Grotius, as denoting the collection of the intent by other means than the sole explanation of the words. That is, it denotes *construction*, as distinguished from mere *interpretation*. 1 *Duer on Ins.* 215. The words of Grotius are, *Si nulla sit conjectura quæ ducat aliò, verba intelligenda sunt ex proprietate, non grammatica quæ est ex origine, sed populari ex usu*.

*Ubi nullum matrimonium, ibi nulla dos*. Where there is no marriage, there is no dower. Bract. fol. 92. 2 *Bl. Com.* 130. The converse rule is also given by Bracton: *Ubi matrimonium, ibi dos*. Where there is marriage, there is dower. *Id. ibid.* In Branch's *Principia*, this maxim is erroneously and ungrammatically made to read *nullum dos*, and the error has been copied by several authors who have cited it. The maxim seems to have been borrowed (though with a different sense attached to the word *dos*,) from that of the civil law: *Ubiunque matrimonii nomen non est, nec dos est*. *Dig.* 23. 3. 3.

*Ubi pugnantia inter se in testamento jubeantur, neutrum ratum est*. Where repugnant or inconsistent directions are con-

tained in a will, neither is valid. *Dig.* 50. 17. 188. pr.

**Ubi quid generaliter conceditur, inest hæc exceptio, si non aliquid sit contra jus fasque.** Where a thing is granted generally, this exception is always implied, that there be nothing contrary to law and right. *Branch's Pr.*

**Ubi quis delinquit, ibi puniatur.** Where a man offends, there he shall be punished. 6 *Co.* 47 b. *Dowdale's case.* In cases of felony, the trial shall be always by the common law in the same place where the offence was, and shall not be supposed in any other place. *Id. ibid.*

**UBI REVERA.** Lat. Where in reality; where in truth, or in point of fact. *Cro. Eliz.* 645. *Cro. Jac.* 4.

**Ubi verba conjuncta non sunt, sufficit alterutrum esse factum.** Where words are not conjoined [used conjunctively] it is sufficient that either one [of the things expressed] be done. *Dig.* 50. 17. 110. 3.

**UBIQUINQUE FUERIMUS IN ANGLIA.** L. Lat. Wheresoever we shall be in England. The style of the return of writs in the court of King's or Queen's Bench; it being in theory a moveable court, attendant upon the sovereign's person. 3 *Bl. Com.* 41, 284. See *Fleta*, lib. 2, c. 2, § 5. *Id.* lib. 2, c. 64, § 19.

**Ubiunque est injuria, ibi damnum sequitur.** Wherever there is an injury, there a damage results. *Branch's Pr.*

**UDAL.** A term mentioned by Blackstone, as used in Finland to denote that kind of right in real property which is called in English law, allodial. 2 *Bl. Com.* 45, note (f.) See *Allodium.* The term is used in Orkney and Zetland. 1 *Forbes' Inst.* part 3, pp. 6, 82.

**UL, Ull.** L. Fr. [from Lat. *ullus*.] Any; any one. *Kelham.*

**ULNA.** Lat. In old English law. An ell. So generally translated in the books; but in *Dyer* it is expressly said that *ulna* means a yard, and not an ell. *Dyer*, 303 b. Blackstone observes that the ancient ell answers to the modern yard. 1 *Bl. Com.* 275. *Dux ulnæ infra listas*; two ells within the lists. *Magna Charta*, c. 25. The Scotch *eln* or *elne* has followed the old Lat. *ulna* more closely than the English word. See *Skene de Verb. Signif. voc. Particata.*

**ULNA FERREA.** L. Lat. In old English law. The iron ell; the standard ell of iron, kept in the Exchequer for the

rule of measure. *Totam terram illam quæ continet in fronte—in latitudine 44 ulnas, de ulnis ferreis Johannis Regis Angliæ, &c.*; all that land which contains in front,—in breadth, 44 ells, of the iron ells of John King of England, &c. 2 *Mon. Angl.* 383.

**ULNAGIUM.** L. Lat. [from *ulna*, q. v.] In old English law. Aulnage, or alnage; ell or yard measure. *Dyer*, 303 b.

**ULNARE.** L. Lat. [from *ulna*, q. v.] In old English law. To measure by the *ulna* or ell; to measure cloth. *Si autem filius burgensis, tunc ætatem habere intelligitur, cum denarios discretè sciverit numerare, et pannos ulnare, et alia negotia similia paterna exercere*; if he be the son of a burgess, he is considered to be of age, when he knows how to count money correctly, and to measure cloths, and to manage other like matters of his father's. *Bract.* fol. 86 b. *Fleta*, lib. 1, c. 11, § 7.

*Ulnator*; a measurer; an alnager. *Dyer*, 303 b.

**ULTERIUS CONCILIUM.** L. Lat. Further argument. A common term in the older reports. 1 *Burr.* 1020. 2 *Wils.* 243.

**ULTIMA VOLUNTAS.** Lat. In old English law. Last will; the last will. *In testamento suo, in ultima voluntate sua*; in his testament, in his last will. *Reg. Orig.* 244 b.

*Ultima voluntas testatoris est perimplenda secundum veram intentionem suam.* The last will of a testator is to be fulfilled according to his true intention. *Co. Litt.* 322 b. Expressed by Littleton, *La volonte de devisour, fait pur son testament, serra performe solonque l'entent del devisour.* *Litt.* sect. 586.

**ULTIMUM SUPPLICIUM.** Lat. The extreme punishment; the extremity of punishment; the punishment of death. 4 *Bl. Com.* 17. *Fleta*, lib. 1, c. 21, § 1. A term derived from the civil law. *Ultimum supplicium esse mortem solam interpretamur*; we interpret the extreme punishment to mean death only. *Dig.* 48. 19. 21.

**ULTIMUM TEMPUS PARIENDI.** Lat. The extreme period of bearing; the extreme period between the conception and the birth of a child. 2 *Steph. Com.* 317.

**ULTIMUS HÆRES.** Lat. In old English law. The last heir. A term applied to the lord to whom an escheat fell; he being considered as taking by descent in a kind of caducary succession. 2 *Bl.*

*Com.* 245. *Ultimi hæredes aliquorum sunt eorum domini*; the last heirs of some tenants are their lords. *Glanv.* lib. 7, c. 17. *Spelman.* In Scotch law, it is applied to the king. *Ersk. Pr.* b. 2, tit. 10.

**ULTRA.** Lat. [L. Fr. *outré, ultre.*] Beyond; the opposite of *infra*, (q. v.) *Talis infirmitas infra annum propriè dicitur languor, si autem ultra annum duraverit, dici poterit morbus soticus*; such an infirmity within a year is properly called sickness; but if it last beyond a year, it may be called a settled or incurable sickness. *Bract.* fol. 344 b. Remedial statutes are construed liberally, and *ultra*, but not *contra* the strict letter. 1 *Kent's Com.* 465. *Dwarris on Statutes*, 726.

**ULTRA MARE.** L. Lat. [L. Fr. *outré meer.*] Beyond sea. One of the old excuses or excuses for not appearing in court at the return of process. *Bract.* fol. 338. See *Essoin*.

**ULTRA VIRES.** Lat. Beyond the powers or capacity. "A deed *ultra vires* is null and void." 1 *Kames' Equity*, 309. See 35 *Eng. Law & Eq. R.* 13.

**ULTRE.** L. Fr. [from Lat. *ultra*, q. v.] Beyond; more than; longer than. *LL. Gul. Cong.* l. 46.

**ULTRONEOUS WITNESS.** In Scotch law. A volunteer witness; one who appears to give evidence, without being called upon. 2 *Alis. Crim. Pr.* 393.

**UM.** L. Fr. Man. A corrupted form of *home*. *Kelham.* See *LL. Gul. Cong.* l. 41.

**UMBESETTING.** O. Sc. In old Scotch law. Obstructing or besetting. "Umbe-setting of the hie gait;" obstructing of the highway. 1 *Pitc. Cr. Trials*, part 1, p. 58.

**UMBILICUS.** Lat. Literally, the navel; the centre of any thing. The name given to the fourth and middle part of the Digests, consisting of eight books, from the twentieth to the twenty-seventh, both inclusive.

**UMPIRAGE.** Decision by an umpire. *Hale's Anal.* sect. xlvii.

**UMPIRE.** A person to whom a matter which has been submitted to arbitrators, is, in case of their disagreement, referred for final decision.\* The umpire is sometimes named in the submission; but more generally, the submission merely provides that he shall be appointed by the arbitrators. *Russell's Arbitrator*, 214. *Billing on Awards*, 106.

*Umpire* is supposed to be derived from

the Lat. *impar*, uneven or odd. It is, however, also expressed in Latin, *imperator*, with which the Scotch *oversman* and French *sur-arbitre* correspond in signification. 2 *Kames' Equity*, 290. *Civ. Code of Louis.* Art. 3083.

**UN FOITZ.** L. Fr. One time; once. *Yearb.* P. 6 Edw. III. 75.

*Un ne doit prise advantage de son tort demesne.* One ought not to take advantage of his own wrong. 2 *And.* 38, 40.

**UNA CUM.** L. Lat. Together with. *Latch.* 146.

**UNA CUM OMNIBUS ALIIS.** Lat. Together with all other things. A phrase in old conveyancing. *Hob.* 175.

*Una persona vix potest supplere vices duarum.* One person can hardly fill the places of two. *Branch's Pr.* citing 7 *Co.* 118 a, *Acton's case.* In the passage referred to, the maxim reads, *Difficile est ut unus homo vicem duorum sustineat.* It is difficult for one man to fill the place, or discharge the duty of two.

**UNA VOCE.** Lat. With one voice; unanimously; without dissent. "The court, *unâ voce*, gave judgment." *Hob.* 129.

**UNANIMITER.** L. Lat. [from *unus*, one, and *animus*, mind.] In old English law. Unanimously; without dissent. *Fleta*, lib. 1, c. 34, § 36.

**UNANIMITY.** In practice. The entire agreement or concurrence of a petit jury in their verdict; all the jurors being of one and the same mind. A quality uniformly required in English and American practice.

\* \* \* Anciently, it was not necessary (at least, not in civil causes) that all the twelve should agree; but, in case of a difference among the jury, the method was to separate one part from the other, and then to examine each of them as to the reasons of their differing in opinion; and if, after such examination, both sides persisted in their former opinions, the court caused *both verdicts* to be fully and distinctly recorded, and then judgment was given *ex dicto majoris partis juratorum*, (according to the verdict of the major part of the jurors.) Thus, in a grand assise upon a writ of right, [in the reign of King Henry III.] between the abbot of Kirkstede and Edmund de Eyncourt, eleven of the jury found for the abbot, and one for Edmund de Eyncourt. In this case, the verdict of the eleven was first recorded. "*Robertus de Harblinge et omnes alii præter Radul-*

*phum filium Simonis dicunt super sacramentum suum,*" &c. Then follows the dictum of the twelfth: "*Et prædictus Radulphus filius Simonis dicit super sacramentum suum,*" &c. Then follows the judgment: "*Sed quia prædicti undecim concorditer et præcise dicunt quod prædictus abbas et ecclesia sua prædicta majus jus habeant tenendi,* &c. *ideo consideratum est quod prædictus abbas et successores sui teneant prædicta tenementa de cætero in perpetuum,*" &c. *Plac. Cor. Justic. itiner. in Com. Lincoln, anno. 56 H. III. rot. 29, in dorso. Hale's Hist. Com. Law, (Runnington's ed. 1820,) 349, note.*

In an assise of novel disseisin, in the reign of Edward I. between William Tristram, plaintiff, and John Simenel and others defendants, where the whole jury consisted of only eleven, ten found for Tristram and one for Simenel, and both verdicts were recorded in this manner: "*Decem jurati dicunt quod,*" &c. "*et undecimus juratorum, scilicet Johannes Kineth, dicit,*" &c. "*Et quia dicto majoris partis juratorum standum est, consideratum est quod prædictus Willielmus recuperet,*" &c. (Ten jurors say that, &c. and the eleventh juror, to wit, John Kineth, says, &c. And because the saying of the major part of the jurors should be abided by, it is considered that the aforesaid William recover, &c.) *Pasch. 44 Edw. I. rot. 10, coram rege.*

**UNARE.** L. Lat. [from *unus*, one.] In old English law. To unite. *Dyer*, 100. *Seipos unaverunt*; united themselves. *Id. ibid.*

**UNARE.** L. Lat. In old records. To inn; to get in, or make up hay fit for carriage, after mowing. *Cartul. S. Edmund. MS. cited in Cowell.*

**UNCIA.** Lat. In the Roman law. An ounce; the twelfth of the Roman *as*, or pound. See *As*.

The twelfth part of any thing, as of an inheritance; the proportion of one-twelfth. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note (*m.*) See *Fleta*, lib. 6, c. 17, § 1.

**UNCIA.** L. Lat. In old charters of the British kings. A measure of land, the quantity of which is very obscurely explained in the books. In *Cowell*, it is said to have consisted of twelve *modii*, and each *modius* possibly 100 feet square.

**UNCIA.** Lat. In old English law. An ounce; the twelfth part of a pound. *Viginti denarii faci' unciam, et duodecim uncia faciunt libram*; twenty pennies make

an ounce, and twelve ounces make a pound. *Fleta*, lib. 2, c. 12, § 1.

**UNCIARIUS HÆRES.** Lat. In the Roman law. An heir to one-twelfth of an estate or inheritance. *Calv. Lex.*

**UNCORE.** L. Fr. Still; again; once more. *Uncore jugement de breve. Yearb. M. 10 Edw. III. 15.*

**UNCORE PRIST.** L. Fr. Still ready. Formal words in the old plea of tender. See *Tout temps prist.*

**UNCUTH.** Sax. [from *un*, not, and *cuth*, known.] In Saxon law. Unknown; a stranger. A person entertained in the house of another was, on the first night of his entertainment, so called. *Bract. fol. 124 b.*

**UNDE.** Lat. Whence; wherefrom. See *infra*.

Whereof. *Unde rectatus est*; whereof he is accused. *Rot. Cl. 3 Edw. I. m. 61.*

Whereupon. *Et unde dicit*; and whereupon he says. *Yearb. M. 1 Edw. II. 1.*

**UNDE COGNATI.** Lat. In the civil law. A species of the *bonorum possessio*, (*q. v.*) granted to cognates, or relations on the part of the mother. *Inst. 3. 10. 1, 2. Dig. 38. 8. Heinecc. Elem. Jur. Civ. lib. 3, tit. 10, § 724. Hallifax, Anal. b. 2, c. 11, num. 5.*

**UNDE LEGITIMI.** Lat. In the civil law. A species of the *bonorum possessio* (*q. v.*) granted to agnates, or the lawful heirs. *Inst. 3. 10. 1, 2. Dig. 38. 7. Hein. El. Jur. Civ. lib. 3, tit. 10, § 723. Hallifax, Anal. b. 2, c. 11, num. 5.*

**UNDE LIBERI.** Lat. In the civil law. A species of the *bonorum possessio*, (*q. v.*) granted to emancipated children, or the proper heirs of the deceased. *Hein. El. Jur. Civ. lib. 3, tit. 10, § 722. Hallifax, Anal. b. 2, c. 11, num. 5. Inst. 3. 10. 1, 2. Dig. 38. 6.*

**UNDE NIHIL HABET.** L. Lat. (Whereof she hath nothing.) In old English law. The name of the writ of dower, which lay for a widow, where *no dower* at all had been assigned her within the time limited by law. 3 *Bl. Com.* 183. *F. N. B.* 147 E. *Roscoe's Real Act.* 39.

**UNDE VI.** Lat. (Wherefrom by force.) In the civil law. The technical name of that species of interdict which was granted to recover the possession of an immoveable thing *wherefrom* a person had been ejected *by force*. *Inst. 4. 15. 6. Heinecc. Elem. Jur. Civ. lib. 4, tit. 15, § 1303. 1 Mackeld. Civ. Law, 256, § 253.*

**UNDE VIR ET UXOR.** Lat. In the civil law. A species of the *bonorum possessio*, (q. v.) granted to a husband or wife, and by which they succeeded each other, on failure of the *cognati*. *Inst.* 3. 10. 1, 2, *Dig.* 38. 11. *Hein. Elem. Jur. Civ.* lib. 3, tit. 10, § 725. *Hall. Anal.* b. 2, c. 11, num. 5.

**UNDEFENDED.** In pleading. Without defence, or denial. Where judgment passes by default against a defendant, the language in which the default is recorded is, that the defendant "says nothing in bar or preclusion of the action, whereby the plaintiff remains therein *undefended* against the said defendant." *Arch. Forms*, 336.

**UNDERLEASE.** In conveyancing. A lease granted by one who is himself a lessee for years, for any fewer or less number of years than he himself holds. If a deed passes *all* the estate or term of the termor, it is an *assignment*; but if it be for a *less* portion of time than the whole term, it is an *underlease*, and leaves a reversion in the termor. 4 *Kent's Com.* 96.

**UNDERLY, Underlie.** Sc. In Scotch law. To abide by; to submit to. To underly the law (*ad subeundum legem*.) 1 *Pitc. Crim. Trials*, part 1, p. 92. See *Id.* p. 22.

**UNDER-SHERIFF.** [L. Lat. *sub-vicecomes*; L. Fr. *south-viscount*.] A person appointed by the sheriff of a county to perform all his ordinary duties in his behalf, and upon whom the whole duties of the office devolve, in case of a vacancy by death or otherwise, until a new sheriff is chosen. Sometimes confounded with a *deputy-sheriff*; but the latter term is properly applicable to those officers whom the sheriff appoints to *execute process* in his behalf, and who have no other powers than such as appertain to that particular duty. See 1 *Chitt. Bl. Com.* 345, note.

**UNDER TENANT.** A tenant under one who is himself a tenant; one who holds by underlease, from a lessee. See *Underlease*.

**UNDERWRITER.** In the law of insurance. An insurer; so called from his *underwriting* or *subscribing* the policy. A term constantly applied to insurers, whether they be corporations or individuals, but most properly applicable to the latter.

In England, marine insurances are most commonly undertaken by private persons, a certain number of whom usually *subscribe* the policy, each engaging, on his own

separate account, to indemnify to the extent of a particular sum of money, being a proportion of the whole value of the subject of insurance; and these are called, in reference to the method used of thus subscribing their names, *underwriters*. 2 *Steph. Com.* 174. The only parties who sign their names at the foot of the policies, in other words, subscribe them, are the insurers, who are hence called the *underwriters*, or *subscribers*. 1 *Arnould on Ins.* 37, (38, Perkins' ed.) In policies of insurance effected with private underwriters, where it is not usual for one person to take upon himself the whole risk of the insurance, each underwriter signs or subscribes the policy, adding on the same line with his name, the sum he intends to insure. The next underwriter to whom the policy is tendered, then in like manner writes under the first subscription his name and the sum he means to insure, and the rest follow in order, until the aggregate of the separate sums written opposite to the name of each underwriter, or, in technical language, "till the aggregate of their several *subscriptions*" amounts to the sum which the party effecting the policy desires to protect by the insurance. *Id. ibid.*

In the United States, where insurances are generally made by incorporated companies, the *underwriting* or subscription usually consists of the signature of the president or vice-president of the company and the sum insured, with the attestation of the secretary.

**UNDIQUE.** Lat. On all sides; from every quarter. *Undique collatis membris*; members being collected from every quarter. A phrase applied to a contract compounded of different contracts. See 1 *Curtis R.* 350; Curtis, J.

**UNDRES.** Sax. In old English law. Minors, or persons under age. *Ante aetatem vero viginti unius annorum, robustos vel habiles ad arma suscipienda pro patriæ defensione non reputantur, et ideo undres dicuntur, et sub tutela dominorum interim remanebunt*; before the age of twenty-one years, they are not regarded as able-bodied, or fit to bear arms for the defence of the country, and therefore they are called *undres*, and in the mean time they shall remain under the protection of their lords. *Fleta*, lib. 1, c. 9, § 4. *Cowell*.

**UN-FREE-MAN.** Sc. [L. Lat. *forensis*.] In Scotch law. A stranger. *Skene de Verb. Sign. voc. Forensis*.

UNG. L. Fr. One; an old form of *un*. *Kelham*.

UNGELD. Sax. [from *un*, without, and *geld*, payment.] In Saxon law. One for whom no payment was to be made. A person so far out of the protection of the law, that if he were murdered, no *geld* or fine should be paid, or composition made by him that killed him. *Cowell*.

UNIARE. L. Lat. [from *unus*, one.] To unite; to make one; to join in a body. *Si quando uniantur duo populi, non amittentur jura sed communicabuntur*; if at any time two nations become one, their rights will not be lost, but shared between them. *Grot. de Jur. Bell. lib. 2, c. 9, § 9*.

UNICA TAXATIO. L. Lat. In old practice. A single taxation. The technical name of the award of the *venire* on the record, where damages on a default or demurrer are to be assessed at the same time with those on an issue; the language of the record being, that "because it is convenient and necessary that there be but one taxation, (*unica taxatio*, in the Latin forms,) in the suit, therefore, as well to try the issue as to inquire of the damages," the sheriff is commanded to summon a jury. *Arch. Forms*, 296.

UNICUS. Lat. [from *unus*, one.] A single one. See *Unica taxatio*.

UNIFORMITY OF PROCESS ACT. The English statute of 2 Will. IV. c. 39, establishing a uniform process for the commencement of actions in all the courts of law at Westminster. 3 *Steph. Com.* 566.

UNILATERAL CONTRACT. [Fr. *contrat unilaterale*.] In modern civil law. A contract where the party to whom an engagement is made, makes no express agreement on his part. *Civil Code of Louis. Art. 1758. Poth. Obl. part 1, ch. 1, sect. 1, art. 2*.

UNIO. Lat. In canon law. A consolidation of two churches into one. *Cowell*.

UNIO PROLIUM. Lat. In German law. Union of offsprings; a species of adoption by which the children of a former marriage are made equal, in regard to the right of succession, with the children of a second marriage. *Heinecc. Elem. Jur. Civ. lib. 1, tit. 11, § 188. Hallifax, Anal. b. 1, c. 8, num. 6*.

UNITAS. Lat. [from *unus*, one.] In old English law. Unity; the uniting or

consolidating of two or more things together. *Unitas juris*; unity of right. *Bract. fol. 76 b*.

UNITY. In the law of estates. The peculiar characteristic of an estate held by several in joint-tenancy, and which is four-fold, viz. unity of *interest*, unity of *title*, unity of *time*, and unity of *possession*. In other words, joint tenants have one and the same *interest*, accruing by one and the same *conveyance*; commencing at one and the same *time*, and held by one and the same undivided *possession*. 2 *Bl. Com.* 180.

UNITY OF INTEREST. One of the properties of a joint estate; all the joint-tenants being entitled to one period of duration or quantity of interest in the lands. 2 *Bl. Com.* 181.

UNITY OF TITLE. One of the essential properties of a joint estate; the estate of all the tenants being created by one and the same act, whether legal or illegal. 2 *Bl. Com.* 181.

UNITY OF TIME. One of the essential properties of a joint estate; the estates of the tenants being vested at one and the same period. 2 *Bl. Com.* 181.

UNITY OF POSSESSION. One of the essential properties of a joint estate, each of the tenants having the entire possession as well of every parcel as of the whole. 2 *Bl. Com.* 182.

The term *unity of possession* is defined by Cowell, "the joint possession of two rights by several titles," called, in the civil law, *consolidatio fructus et proprietatis*. The example he gives of it is the following: If I take a lease of land from one upon a certain rent, and afterwards I buy the fee-simple, this is an unity of possession by which the lease is extinguished.

*Unius omnino testis responsio non auditor*. The answer of one witness shall not be heard at all; the testimony of a single witness shall not be admitted under any circumstances. A maxim of the civil and canon law. *Cod. 4. 20. 9. Decret. Greg. IX. lib. 2, tit. 20, c. 23. 3 Bl. Com. 370. Best on Evid. 426, § 390, and note*.

*Uniuscujusque contractus initium spectandum est, et causa*. The commencement and cause of every contract are to be regarded. *Dig. 17. 1. 8. Story on Bailm. § 56*.

*Universalis sunt notiora singularibus*. Universal or general things are more known than particular things. 2 *Rol. R. 294*.

**UNIVERSAL LEGACY.** [Fr. *legs universel*.] A testamentary disposition by which the testator gives to one or several persons the whole of the property which he leaves at his decease. *Civil Code of Louis.* Art. 1599.

**UNIVERSAL REPRESENTATION.** In Scotch law. A term applied to the representation by an heir, of his ancestor. *Bell's Dict.*

**UNIVERSITAS.** Lat. [from *universus*, the whole.] In the civil law. A corporation aggregate. *Dig.* 3. 4. 7. Literally, a whole formed out of many individuals. 1 *Bl. Com.* 469. *Si universitas ad unum redit, et stet nomen universitatis*; if the corporation be reduced to one member, yet the name of a corporation will be preserved. *Dig. ub. sup.* *Universitas vel corporatio non dicitur aliquid facere, nisi id sit collegialiter deliberatum, etiam si major pars id faciat*; a corporation is not said to do any act, unless it have been deliberated upon in corporate form, even though a majority of the members should do it. *Davies' R.* 48.

**UNIVERSITAS RERUM.** Lat. In the civil law. Literally, a whole of things. Several single things, which, though not mechanically connected with one another, are, when taken together, regarded as a whole in any legal respect, (*corpus quod ex distantibus constat*.) 1 *Mackeld. Civ. Law*, 154, § 149. *Inst.* 2. 20. 18.

**UNIVERSITAS FACTI.** Lat. In the civil law. A plurality of corporeal things of the same kind, which are regarded as a whole; e. g. a herd of cattle, a stock of goods. 1 *Mackeld. Civ. Law*, 154, § 149. *Inst.* 2. 20. 18.

**UNIVERSITAS JURIS.** Lat. In the civil law. A quantity of things of all sorts, corporeal, as well as incorporeal, which, taken together, are regarded as a whole; e. g. an inheritance, an estate. 1 *Mackeld. Civ. Law*, 154, § 149.

**UNIVERSUS.** Lat. The whole; all together. *Calv. Lex.*

In old English law. The whole; all. *Universitatem vestram scire volumus*; we will that all of you know. *Cart. Conf.* 49 Hen. III.

**UNKOUTH.** Unknown. The L. Fr. form of the Sax. *uncouth*, (q. v.) *Britt.* c. 12.

**UNLAGE.** Sax. [from *un*, without, and *lag*, law.] An unjust law. *LL. Hen.* I. c. 34, 84. *Cowell.*

**UNLARICH.** In old Scotch law. That which is done without law, or against law. *Spelman.*

**UNLAW.** In Scotch law. An amercement for not appearing in court. *Skene de Verb. Signif.* voc. *Amerciamentum*. 2 *Forbes' Inst.* 225.

**UNLAWFUL ASSEMBLY.** [L. Lat. *illicita congregatio*.] In English criminal law. Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm. 4 *Steph. Com.* 278. An unlawful assembly is when three or more do assemble themselves together to do an unlawful act, as to pull down enclosures, &c., and part without doing it, or making any motion towards it. 4 *Bl. Com.* 146.

In American criminal law, any tumultuous disturbance of the public peace by three persons or more, having no avowed, ostensible, legal or constitutional object, assembled under such circumstances, and deporting themselves in such a manner as to produce danger to the public peace and tranquillity, and which excites terror, alarm and consternation in the neighborhood, is an unlawful assembly. *Wharton's Am. Crim. Law*, § 2473. 4 *Penn. Law J.* 31. 4 *C. & P.* 372, cited *ibid.*

"UNMARRIED," in a will, denotes either never having been married, or not having a husband or wife at the time. The former is its ordinary signification, and it has been so construed in several cases, though the effect of such construction was to render it inoperative. 1 *Jarman on Wills*, 457, (425, Perkins' ed.) But the sound rule, it is said, in such cases, would seem to be, to construe the expression as used in its less accustomed sense. *Id. ibid.*

**UNO FLATU.** Lat. In one breath. 3 *M. & Gr.* 45. "The whole matter begins in an instant *et quasi uno flatu*." 3 *Leon.* 12, case 28. *Uno flatu et uno intuitu*; at one breath, and in one view. 3 *Story's R.* 504.

**Uno absurdo dato, infinita sequuntur.** One absurdity being allowed, numbers without end follow. 1 *Co.* 102.

**UNQUES.** L. Fr. Ever; always. *Ne unques*; never. See *Ne unques*, &c.

**UNQUES PRIST.** L. Fr. Always ready. *Cowell.* Another form of *tout temps prist*, (q. v.)

**UNSOLEMN WAR.** War denounced without a declaration; war made not upon general, but special declaration; imperfect war. Cowen, J. 1 *Hill's* (N. Y.) *R.* 409. A war is none the less public or national, because it is *unsolemn*. *Id. ibid.*

**UNTIRIFT.** A prodigal; a spendthrift. 1 *Bl. Com.* 306.

**Unumquodque eodem modo quo colligatum est, dissolvitur.—quo constituitur, destruitur.** Every thing is [properly] dissolved by the same means by which it is put together,—destroyed by the same means by which it is established. 2 *Rol. R.* 39. *Broom's Mar.* 417, 414.

**Unumquodque est id quod est principalis in ipso.** Every thing is [in other words] that which is the more principal thing in it; the most important constituent of a thing represents, or is the thing itself. *Branch's Pr. Hob.* 123.

**Unumquodque principiorum est sibimetipsi fides; et perspicua vera non sunt probanda.** Every general principle [or maxim of law] is its own pledge or warrant; and things that are clearly true are not to be proved. *Branch. Co. Litt.* 11.

**UNWRITTEN LAW.** See *Lex non scripta*.

**UPLANDA.** L. Lat. [from Sax. *up*, above, and *land*.] In old records. Elevated land; firm or dry land; the opposite of marshy ground. *Spelman. Ingulph. Hist. Croyl.* cited *ibid.*

**UPLIFTED HAND.** In practice. A form in which an oath is sometimes taken; the right hand being held up while it is administered, instead of being laid upon the gospels. See *Depose*. It seems to have been occasionally used in England at an early period. *Præsentibus igitur xii. juratoribus, et quatuor villatis, imprimis jurabit quilibet de villata per se, vel omnes simul erectis sursum manibus singulorum, in hæc verba*; the twelve jurors then being present, and the four townsmen, in the first place each of the townsmen shall swear by himself, or all of them holding up all their hands together at the same time, in these words. *Bract. fol.* 143 b.

**UPPER BENCH.** The court of King's Bench, so called during the exile of King Charles the Second. 3 *Bl. Com.* 202, 203.

**UPSUN.** In Scotch law. Between the hours of sunrise and sunset. Poining must be executed with *upsun*; [i. e. while the sun is up.] 1 *Forbes' Inst.* part 3, p. 32.

**URBAN SERVITUDE.** [Lat. *servitus prædii urbani*.] In the civil law. A servitude annexed to an urban estate, or *prædium urbanum*, (q. v.) Such as the servitude or right of support, of drip, of drain, &c. 3 *Kent's Com.* 436.

**URBS.** Lat. In the civil law. A city. Generally limited to the space within the walls, but in its application to Rome, it included the suburbs. *Urbis appellatio muris, Romæ autem continentibus ædificiis finitur, quod latius patet. Dig.* 50. 16. 2, pr. See *Id.* 50. 16. 87. *Id.* 50. 16. 139, pr. *Id.* 50. 16. 147. Derived by Pomponius, in the Digests, from *urbum*, the curvature or curved mark of a plough, which was used in founding a city. *Dig.* 50. 16. 239. 6.

**URE.** L. Fr. and Eng. Effect; practice. *Mis en ure*; put in practice; carried into effect. *Kelham.* Put in *ure*. 1 *Leon.* 90. *Stat.* 13 *Eliz.* c. 5.

**URER.** L. Fr. In old English law. To enure. *Un releas prendra effect, et urera*; a release shall take effect and enure. *Litt. sect.* 305, 306, 307.

**USA.** L. Lat. In old Saxon records. A river or stream. *Spelman.*

**USAGE,** in its broadest sense, includes both custom and prescription, but is ordinarily applicable to trade; designating the habits, modes and course of dealing which are generally observed either in any particular branch of trade, or in all mercantile transactions. 2 *Greenl. Evid.* § 248. As to the effect of usage in controlling the interpretation of a policy, see 1 *Duer on Ins.* 253—311. As to its effect in the construction of a charter-party, see *Abbott on Ship.* [274,] 353, et seq. "The office of an usage is strictly one of exposition, and it is allowable to be given in evidence as one means of arriving at the intention of the parties, and can never be received to thwart it when it is clearly and fully expressed." Bennett, J. 26 *Vermont R.* 136.

**USANCE.** Fr. In mercantile law. The common period fixed by the usage or custom or habit of dealing between the country where a bill is drawn, and that where it is payable, for the payment of bills of exchange. *Story on Bills*, § 50. It means in some countries, a month, in others two or more months, and in others half a month. *Id.* § 144. See *Id.* § 332, and note.—A period of so many days or months after the date of a bill of exchange, according to the custom of differ-

ent places, before the bill becomes due. *McCulloch's Dict.*

USARE. L. Lat. In old European law. To use, or enjoy. *Villam tenere et usare*; to hold and use a farm. *Chart. Alam.* 67. *Spelman.*

USE. The profit or benefit of lands or tenements. *Shep. Touch.* 501.—The right in equity to have the profit or benefit of lands or tenements. *Id.* (by Preston,) *ibid.*—The equity and honesty to hold the land in *conscientia boni viri*. *Shep. Touch. ub. sup.*—A confidence reposed in another, who was tenant of the land, or *terre-tenant*, that he should dispose of the land according to the intentions of *cestuy que use*, or him to whose use it was granted, and suffer him to take the profits. As if a feoffment was made to A. and his heirs, to the use of (or in trust for) B. and his heirs; here at the common law, A. the *terre-tenant*, had the legal property and possession of the land, but B. the *cestuy que use*, was in conscience and equity to have the profits and disposal of it. 2 *Bl. Com.* 328. This definition of Blackstone seems to be merely that of Lord Coke, stated in clearer terms. A trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land; *scilicet*, that *cestui que use* shall take the profit, and that the *terre-tenant* shall make an estate according to his direction. *Co. Litt.* 272 b. These are the definitions of uses as they existed before the Statute of Uses, 27 Hen. VIII. c. 10. As to the nature of uses before and since the statute, see 2 *Bl. Com.* 327, 337. 1 *Steph. Com.* 328—344. 4 *Kent's Com.* 288—301. 1 *Greenleaf's Cruise's Digest*, tit. xi.

USE. [Lat. *usus*.] In the civil law. The bare use of a thing for necessary purposes. See *Usus*.

USEE. A person for whose use a suit is brought. A term used in some of the Southern states. 24 *Mississippi R.* 77.

USER DE ACTION. L. Fr. In old practice. The pursuing or bringing an action. *Cowell.*

USO. Span. [from Lat. *usus*, use.] In Spanish law. Usage; that which arises from certain things which men say and do and practice uninterruptedly for a great length of time without any hindrance whatever. *Las Partidas*, part. 1, tit. 2, l. 1.

USQUE AD. L. Lat. As far as; till;

until; to; up to. See 1 *Str.* 179, 181, arg. Construed exclusively. 2 *Mod.* 280. 4 *Id.* 182. *Usque ad filum aquæ*; as far as the thread of the stream. *Bract.* fol. 208 b.

UST. L. Fr. Had. *Ust este*; had been. *Yearb.* M. 8 Edw. III. 2. *Ussent*; (they) had. *Usses, ussomus*; should or would have. *Id. ibid.*

USUALIS. Lat. In old English law. Usual, ordinary. *Usualis annus*; the ordinary year, consisting of three hundred and sixty-five days; called, also, *annus minor*. *Bract.* fol. 359 b.

USUARIUS. Lat. In the civil law. One who had the mere use of a thing belonging to another, for the purpose of supplying his daily wants; an usuary. *Dig.* 7. 8. 10, pr. *Calv. Lex.*

USUCAPER. Lat. [from *usus*, use, and *capere*, to take.] In the civil law. To acquire by use; to make one's own by possession. *Dig.* 41. 3. *Calv. Lex.* To gain a title by such means.

USUCAPIO. Lat. [from *usus*, use, and *cipio*, a taking.] In the civil law. The acquisition of property by continued possession for a time defined by law; (*ad-jectio domini per continuationem possessionis temporis lege definiti*.) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 6, § 438. *Dig.* 41. 3. Commonly Anglicized, *usucapion*. *Hallifax, Anal.* b. 2, c. 5, num. 2.—The right acquired by the long possession of any thing substantial and corporeal, to the exclusion of the real owner. *Cooper's Just. Inst. Notes*, \*472. It was a kind of prescription founded upon the Twelve Tables, and was distinguished from prescription, properly so called, which rested on the praetorian law. *Usucapion* was perfected by one year's possession of a moveable, and two years' of an immoveable chattel; *prescription* required ten years as against parties present, and twenty years as against parties absent. *Usucapion* did not, while *prescription* did take place as to incorporeal hereditaments, as services incident to estates. *Usucapion* transferred the property of the thing itself; *prescription* operated only in bar of the right of the owner or mortgagor. *Id. ibid.* These distinctions were abolished by Justinian, and *prescription* now comprehends the meaning of both terms. *Hallifax, Anal.* b. 2, c. 5, num. 3. 2 *Bl. Com.* 264, note (f.)

USUFRUCT. [Lat. *ususfructus*.] In the civil law. The right of using and en-

joying the profits of a thing belonging to another, without impairing the substance. *Hallifax, Anal.* b. 2, c. 3, num. 8. It is distinguished from a *use*, which is a mere limited right, importing a use for necessary purposes only. *Id.* num. 11. See *Usus*, *Usufructus*.

**USUFRUCTUARIUS.** Lat. [from *ususfructus*, q. v.] In the civil law. One who had the usufruct of a thing; an usufructuary. *Inst.* 2. 4. 3. *Dig.* 7. 9. Distinguished from *usuarius* (one who had a mere use) by the following circumstances: first, he had the full profit or enjoyment of the thing used, whereas the *usuarius* had it only for the purpose of supplying his daily wants and necessities; secondly, he might transfer his right to another, which the *usuarius* could not; and thirdly, he might cultivate the land himself, which the *usuarius* could not. *Calv. Lex.*

**USURA.** Lat. [from *usus*, use; Gr. *ῥέκος*, q. v.] In the civil law. Money given for the use of money; interest. *Dig.* 50. 16. 121. Commonly used in the plural, *usuræ*. *Dig.* 22. 1.

*Usura centesima*, *usuræ centesimæ* or *usuræ asses*; twelve per cent. per annum, or one per cent. monthly. The highest rate of interest allowed before the time of Justinian. 2 *Bl. Com.* 462, and note (*m.*) *Hullifax, Anal.* b. 2, c. 15, num. 6. *Calv. Lex.*

*Usuræ deunces*; eleven per cent. 2 *Bl. Com. ub. sup.*

*Usuræ dextances*; ten per cent. *Id. ibid.*

*Usuræ dodrantes*; nine per cent. *Id. ibid.*

*Usuræ besses*; eight per cent. *Id. ibid.*

*Usuræ septunces*; seven per cent. *Id. ibid.*

*Usuræ semisses*; six per cent. *Id. ibid.*

*Usuræ quincunces*; five per cent. *Id. ibid.*

*Usuræ trientes*; four per cent. This was the rate established by Justinian. *Id. ibid.*

*Usuræ quadrantēs*; three per cent. *Id. ibid.*

*Usuræ sextances*; two per cent. *Id. ibid.*

*Usuræ uncæ*; one per cent. *Id. ibid.*

**USURA.** Lat. In old English law. Interest, or usury, as it was called. *Usura dicitur quia datur pro usu æris*; usury is so called because it is given *pro usu æris*, for the use of money. 2 *Inst.* 89. *Usura dicitur ab usu et ære, quasi usuæra*, i. e.

*usus æris*; *usura* (usury) is derived from *usus* and *ære* (*æs*), as it were *usuæra*, i. e. *usus æris*; the use of money. 5 *Co.* 70 a, *Clayton's case*.

*Usura est commodum certum quod propter usum rei mutuata recipitur. Sed secundario spirare de aliqua retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum*; usury is a certain benefit which is received for the use of a thing lent. But to have an understanding [literally, to breathe or whisper] in an incidental way, about some compensation to be made at the pleasure of the borrower, is not unlawful. *Branch's Pr.* 5 *Co.* 70 b, *Clayton's case*. *Glanv.* lib. 7, c. 16.

**USURA MARITIMA.** Lat. [Gr. *ῥέκος θαλασσίας*.] Maritime interest. 2 *Bl. Com.* 458. Otherwise called *fœnus nauticum*, (q. v.) *Dig.* præm. (*de Conf. Dig.*) § 5.

**USURÆ.** Lat. In old English law. Usury; interest of money. *Provisum est, et à rege concessum, quòd usuræ non currant contra aliquem infra ætatem existentem, &c.*; it is provided and granted by the king that interest shall not run against any one being within age, &c. *Fleta*, lib. 2, c. 57, § 8. *Stat. Merton*, c. 22.

**USURARE.** L. Lat. In old English law. To pay interest; to carry or be chargeable with interest. *Artic. Mag. Cart. Johan.* c. 34. *Fleta*, lib. 2, c. 57, § 7.

**USURARIUS.** L. Lat. In old English law. An usurer. *Fleta*, lib. 2, c. 52, § 14.

**USURPARE.** Lat. In the civil law. To interrupt a use, or usucapion; the opposite of *usucapere*, (q. v.) *Calv. Lex.*

**USURPATIO.** Lat. [from *usurpare*, q. v.] In the civil law. The interruption of a usucapion, by some act on the part of the real owner. *Dig.* 41. 3. 2. *Calv. Lex.*

**USURPATION.** The exercise or use of an office or franchise, without authority. 3 *Bl. Com.* 262.

In English ecclesiastical law. The absolute ouster or dispossession of the patron of a benefice, which happens when a stranger that has no right presents a clerk, who is thereupon admitted and instituted. *Co. Litt.* 227. 3 *Bl. Com.* 242.

**USURY.** [from Lat. *usura*, q. v.] In old English law. Interest of money; increase for the loan of money; a reward for the use of money. 2 *Bl. Com.* 454.

In modern law. Unlawful interest; a

premium or compensation paid or stipulated to be paid for the use of money borrowed or returned, beyond the rate of interest established by law. *Webster*.—An unlawful contract upon the loan of money, to receive the same again with exorbitant increase. 4 *Bl. Com.* 156. The illegal profit which is required and received by the lender of a sum of money, from the borrower, for its use. *Bouvier*. See *United States Digest*, Usury.

USUS. Lat. [from *uti*, to use.] In the civil law. Use; the use of a thing; the right to the use of a thing. Properly, the use of a thing, as land or a house, for the mere purpose of supplying one's daily wants or necessities, (*ad necessitatem*;) as distinguished from *usufructus*, which was the larger right of using and enjoying a thing at one's pleasure. The *usuarius* had the *usus*, (bare use,) but not the *fructus*, (enjoyment;) the *usufructuarius* had both. *Calv. Lex. Heinecc. Elem. Jur. Civ. lib. 2, tit. 4, § 415. Minus juris est in usu, quam in usufructu; nam is qui fundi nudum habet usum, nihil ulterius habere intelligitur, quam ut oleribus, pomis, floribus, feno, stramentis et lignis ad usum quotidianum utatur; inque eo fundo hactenus ei morari licet, ut neque domino fundi molestus sit, neque iis per quos opera rustica fiunt, impedimento; nec ulli alii jus quod habet, aut locare, aut vendere, aut gratis concedere potest; cum is, qui usumfructum habet, possit hæc omnia facere*; there is less of right in a use than in a usufruct; for he who has the naked use of land, is understood to have nothing more than the liberty of using so much of the herbs, fruits, flowers, hay, straw and wood, as may be sufficient for his daily wants; and he is permitted to stay [or be commorant] upon the land, only on condition that he neither becomes troublesome to the owner, nor is a hindrance to those by whom the labors of husbandry are performed; nor can he either let, or sell, or gratuitously grant to any other, the right which he has; whereas he who has the usufruct can do all these things. *Inst. 2. 5. 1. See Dig. 7. 8. Id. 50. 16. 203.*

USUS. Lat. In old English law. A use. See *Use*. *Usus est dominium fiduciarium*; a use is a fiduciary ownership. *Bacon's Read. Stat. Uses. Usus et status, sive possessio, potius differunt secundum rationem fori, quam secundum rationem rei*; the use and the estate, or possession, differ

more in the reason of the law, than in the nature of the thing itself. *Id. ibid.*

USUS BELLICI. Lat. In international law. Warlike uses, or objects. "It is the *usus bellici* which determine an article to be contraband." 1 *Kent's Com.* 141.

USUSFRUCTUS. Lat. [from *usus*, use, and *fructus*, fruit or enjoyment.] In the civil law. The right of using and enjoying the profits of things belonging to another, without impairing the substance of the things themselves; (*jus alienis rebus utendi fruendi, salva rerum substantia*.) *Inst. 2. 4, pr.* It is a right to a corporeal thing, (*est jus in corpore*;) which being destroyed, the usufruct itself must necessarily be taken away, (*quo sublato et ipsum tolli necesse est*.) *Id. ibid.* See *Dig. 7. 1. 1, 2*, It is a species of personal servitude, where the land serves the person. *Heinecc. Elem. Jur. Civ. lib. 2, tit. 4, § 414. See Fleta, lib. 4, c. 31, § 1.*

UT. Lat. In the civil law. That. A particle properly expressive of the final cause or object of a thing, (*proprium est finalem dicere causam*.) *Calv. Lex.*

That. A particle expressive of qualification; the mark of a *modus*. *Id.* As in the four innominate contracts, *do ut des, do ut facias, facio ut des, facio ut facias*, (qq. v.) It expresses what in the common law is termed *consideration*, (q. v.)

As, (*sicut*;) expressive of similitude. *Id.*

As, as though, (*tanquam*.) *Id.*

Although, (*quamvis*.) *Id.*

But, (*sed*.) *Id.*

When, (*quando*.) *Id.*

UT. Lat. In old English law. That. A particle, particularly appropriated to express a *modus*, or qualification, as *si* was used to express a condition. *Bract. fol. 18 b. Co. Litt. 204 a. See Scito quod ut, &c.* This shows that *modus* and *conditio* had essentially a different import. The use of *ut*, in this peculiar application, was taken from the civil law. See *supra*.

That; in order that. See *Ut res magis valeat, &c.*

As. See *Ut de feodo*.

UT AUDIVI. Lat. As I heard. *Freem. 5, 19. Bunb. 165. Dyer, 30 b.* A reporter's note.

UT CREDO. Lat. As I believe. *Dyer, 76 b.* A reporter's note.

UT CURRERE SOLEBAT. Lat. As it was wont to run. A part of the maxim, *Aqua currit et debet currere, ut currere sole-*

**bat.** Every proprietor of land on the bank of a fresh water river has a right to the use of the water as it was wont to run, (*ut currere solebat*.) without diminution or alteration; and no owner has, in general, a right to use it to the prejudice of other owners above or below him, by throwing it back upon the former, or subtracting it from the latter. 2 *Hilliard's Real Prop.* 101.

**UT DE FEODO.** L. Lat. As of fee. *Et regulariter verum est quod dominicum dici potest omne illud tenementum de quo antecessor obiit seysitus ut de feodo, sive cum usufructu, vel sive;* and regularly, it is true that every tenement may be called demesne, of which the ancestor died seised as of fee, whether with the usufruct or without. *Bract.* fol. 263. *Fleta*, lib. 5, c. 5, § 25. See *Demesne*.

**UT HOSPITES.** Lat. As guests. 1 *Salk.* 25, pl. 10.

*Ut pena ad paucos, metus ad omnes perveniat.* That the punishment may reach a few, but the fear of it effect all. A quotation from Cicero, (*pro Cluentio*, 46,) adopted as a maxim in criminal law, expressive of one of the principal objects of human punishment. 4 *Inst.* 6. 4 *Bl. Com.* 11.

*Ut res magis valeat quam pereat.* That the thing, or subject matter, may rather have effect than be destroyed. "We must construe the words of the instrument, if possible, *ut res magis valeat quam pereat.*" *Grose*, J. 10 *East*, 427. A maxim expressive of one great object regarded by courts in the construction of contracts, viz. the preservation of the contract itself. See 3 *Hill's* (N. Y.) *R.* 235, *Cowen*, J. It is a part of the maxim, *Benigne faciendæ sunt interpretationes*, &c. and expresses the same sentiment with the maxim, *Benedicta est expositio quando res redimitur a destructione*, (qq. v.) Blackstone applies it to the construction of statutes. 1 *Bl. Com.* 89. The expression *quo res magis valeat quam pereat* occurs in *Dig.* 34. 5. 12. And see *Fleta*, lib. 2, c. 72, § 16.

**UTAS.** L. Lat. [*L. Fr. utave.*] In old English practice. Octave; the octave, (*octava*;) the eighth day following any term or feast; as the *Utas* of St. Michael, the *Utas* of St. Hilary. *Cowell. Yearb.* H. 9 *Edw.* III. 4. *Dyer*, 78, (Fr. ed.)

"**UTENSILS**," in a will, held not to pass plate or jewels. *Dyer*, 59 b, pl. 15. 2 *Williams on Exec.* 1024.

**UTERINE.** [*Lat. uterinus*, q. v.] Born

of the same mother, (*ex eodem utero*.) A uterine brother or sister is one born of the same mother, but by a different father. See *Uterinus*.

**UTERINUS.** Lat. [from *uterus*, womb.] In old English law. Uterine; born of the same mother. *Soror vel frater de una et eadem matre, sed diverso patre, soror uterina, frater uterinus, dici poterunt;* a sister or brother from one and the same mother, but a different father, may be called a uterine sister and uterine brother. *Bract.* fol. 68 b.

**UTERQUE.** Lat. Both; each. "The justices being in doubt as to the meaning of this word in an indictment, demanded the opinions of grammarians, who delivered their opinions that this word doth aptly signify one of them." 1 *Leon.* 241.

**UTFANGTHEFE.** *Utfangthef.* Sax. [from *ut*, out, *fang*, taken, and *theof*, thief.] In Saxon and old English law. Literally, an out-taken thief, (*fur extra captus*.) *Spelman.* *Utfangthef vero dicitur latro extraneus, veniens aliunde de terra aliena, et qui captus fuit in terra ipsius qui tales habeat libertates.* *Utfangthefe* signifies a strange thief, who comes from another place, from another's land, and who is taken in the land of him who has such liberties. *Bract.* fol. 154 b. According to this explanation, *ut*, in this compound word, is to be taken in immediate connection with *thefe*, and not with *fang*, as *Spelman* seems to understand it.

**UTHESIUM.** Lat. In old English law. Hue; a form of *hutesium*, produced apparently, by a transposition of the aspirate. *Si ceperint misericordias pro defaultis, vel pro uthesio non levato vel non secuto;* if they have taken amercements for defaults, or for not raising or following the hue. *Bract.* fol. 116 b. See *Hue*, *Hutesium*.

**UTI.** Lat. As. See *Uti rogas*, *Uti possidetis*.

**UTI.** Lat. In the civil law. To use. Strictly, to use for necessary purposes; as distinguished from *frui*, to enjoy. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 4, § 415.

**UTI FRUI.** Lat. In the civil law. To have the full use and enjoyment of a thing, without damage to its substance. *Calv. Lex.* Hence the term *ususfructus*, (q. v.)

**UTI POSSIDETIS.** Lat. (As you possess.) In the civil law. A species of interdict, (q. v.) for the purpose of retaining possession of a thing, granted to one

who, at the time of contesting suit, was in possession of an immoveable thing, in order that he might be declared the legal possessor. *Halifax, Anal.* b. 3, c. 6, num. 8. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 15, § 1300. 1 *Mackeld. Civ. Law*, 259, § 252. It was a species of proceeding by which the possession of land or of houses was contended for; and that party succeeded in it who was in possession at the time of the interdict, provided he had not obtained the possession from his adversary by force, (*vi*.) clandestinely, (*clam*.) nor precariously, (*precario*.) *Inst.* 4. 15. 4. See *Dig.* 48. 17. 1. *Cod.* 8. 6.

**UTI POSSIDETIS.** Lat. (As you possess, i. e. each keeping what you respectively have.) In international law. A term used to denote the principle of a treaty which leaves belligerent parties mutually in possession of what they have acquired by their arms during the war. *Brande.* The *uti possidetis* is the basis of every treaty of peace, unless it be otherwise agreed. 1 *Kent's Com.* 173.

**UTI ROGAS.** Lat. (As you ask.) In Roman law. The form of words by which a vote in favor of a proposed law was orally expressed. *Uti rogas, volo vel jubeo*; as you ask, I will or order; I vote as you propose; I am for the law. The letters U. R. on a ballot, expressed the same sentiment. *Adam's Rom. Ant.* 98, 100.

**Utile per inutile non vitiatur.** The useful is not vitiated by the useless. Where an instrument contains, in addition to proper matter, that which need not have been stated, such unnecessary matter will not vitiate the other. *Calv. Lex.*

This maxim of the civil law has long been adopted in the common law, as a maxim of conveyancing, of pleading, and of evidence. Surplusage does not vitiate that which in other respects is good and valid. *Co. Litt.* 3 a, 227 a. 3 *Co.* 10 a, *Downtie's case.* *Broom's Max.* 82, [486.] *Steph. Pl.* 378. Averments wholly immaterial need not be proved. *Best on Evid.* 303, § 263. The maxim is thus further explained in the civil law. Where the useful can be separated from the useless matter, in accordance with nature, law, or the interest of parties, it will not be impaired by it; but where the two are not separable without impugning some rule of nature or of law, or contravening the intention of the parties, there the useful matter is vitiated by the useless. *Calv. Lex.*

**UTILIDAD.** Span. In Spanish law. The profit of a thing. *White's New Recop.* b. 2, tit. 2, ch. 1.

**UTILIS.** Lat. In the civil law. Useful; beneficial; equitable; available. *Actio utilis*; an equitable action. *Calv. Lex.* *Dies utilis*; an available day; one on which a party might sue, or have access to the prætor or judge. *Id.*

**UTILITAS.** Lat. [from *utilis*, q. v.] Advantage; benefit; interest; utility; profit. See *Calv. Lex.*

**UTISME.** L. Fr. Eighth. *Art. sup. Cart.*

**UTLAGARE.** L. Lat. [from Sax. *utlagh*, q. v.] In old English law. To outlaw; to put out of the law; to put out of the protection of the law. *Nullus liber homo capiatur—aut utlagetur, aut exulatur*, &c.; no freeman shall be taken,—or outlawed, or exiled, &c. *Magna Charta*, c. 29. *Extunc utlagabitur, sicut ille qui est extra legem, sicut Englishman*; he shall thenceforth be outlawed, as one who is out of the law, as a lawless man. *Bract.* fol. 125. *Minor vero, et qui infra ætatem duodecim annorum fuerit, utlagari non potest, nec extra legem poni*; a minor, and he who is within the age of twelve years, cannot be outlawed, nor put out of the law. *Id.* fol. 125 b.

**UTLAGARIA.** L. Lat. [from *utlagare*, q. v. L. Fr. *utlagerie*.] In old English law. Outlawry. *Bract.* fol. 128 b. *Fleta*, lib. 1, c. 28.

**UTLAGATIO.** L. Lat. [from *utlagare*, q. v.] In old English law. The outlawing of a person; outlawry. *Sequi ad utlagationem*; to pursue to outlawry. *Bract.* fol. 125 b. *Fleta*, lib. 1, c. 28.

**UTLAGATUS.** L. Lat. [from *utlagare*, q. v.] In old English law. An outlawed person; an outlaw. *Bract.* fol. 125 b, 128 b. *Fleta*, lib. 1, c. 28. *Utlagatus est quasi extra legem positus; caput gerit lupinum*; an outlaw is, at it were, put out of the law; he carries a wolf's head. 7 *Co.* 14 a, *Calvin's case.* See *Caput lupinum*, *Wolf's head*.

**UTLAGE.** L. Fr. An outlaw. *Britt.* c. 12.

**UTLAUGHE, Utlagh, Utlaghe.** [from Sax. *ut*, out, and *lag*, or *lagh*, law.] Sax. and O. Eng. In old English law. Outlaw; an outlaw. *In primis forisfacit patriam et regnum, et exul efficitur, et talem vocant Anglici Utlaghe, et alio nomine antiqutis solet nominari, scilicet, Frendlesman*,

*et sic videtur, quod forisfacit amicos*; in the first place, he forfeits [puts himself out of] the country and the realm, and is made an exile, and such a one the English call *Utlaghe*, and he was anciently called by another name, to wit, *Frendlesman*, and so it appears that he forfeits [puts himself out of the company of] his friends. *Bract.* fol. 128 b. *Utlaghe*, *bannitum extra legem*; *utlaghe* signifies proclaimed out of the law. *Fleta*, lib. 1, c. 47, § 25.

UTLAND. Sax. [from *ut*, out, and *land*.] In Saxon law. Outland, (*terra extera*;) tenemental land; the tenancy; the lands which lay *without* the demesnes of a manor. *Spelman. To Wutfege that inland, & to Alfege that utland*; to Wulfce the inland or demesnes, and to Elfe the outland or tenancy. *Testam. Brither. in itin. Cantii, apud Lambard. Spelman, voc. Inland.*

UTLARY, *Utlawry*. Old forms of *outlawry*, (q. v.) The following appear to have been the successive forms of the word: L. Fr. *utlagerie*; L. Lat. *utlagaria*, (from Sax. *utlagh*;) O. Eng. *utlagery*, *utlary*, *utlawry*, *outlawry*.

UTLEP, *Utlepe*. Sax. In old English law. Escape; the escape of a robber or robbers, (*escapium latronum*.) *Fleta*, lib. 1, c. 47, § 14.

UTRUBI. Lat. In the civil law. With whichever; (Lat. *apud quem*; Gr. *παρ ὁποτέρου*.) The name of a species of interdict for retaining a thing, granted for the purpose of protecting the possession of a moveable thing, as the *uti possidetis* was granted for an immoveable. *Inst.* 4. 15. 4. *Dig.* 43. 31. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 15, § 1301. 1 *Mackeld. Civ. Law*, 250, § 252. It was, in other words, the mode of contesting or trying the right to the possession of moveable property. *Inst. ub. sup.*

UTRUM. See *Assise of Utrum*.

UTRUMQUE NOSTRUM. L. Lat. Both of us. Words used formerly in bonds. Distinguished from *quemlibet nostrum*, each of us. *Wingate's Max.* 12, pl. 9. See *Dyer*, 19 b.

UTTER. An old form of *outer*, framed apparently from the Sax. *ut*, out. See *Utter barrister*.

To UTTER. [from Sax. *ut*, out.] In criminal law. To put out, or put forth; to publish; to circulate; to offer to circulate. To *utter* and publish an instrument is to declare or assert directly or indirect-

ly, by words or actions, that it is good. *Uttering* it is a declaration that it is good, with an intention to pass, or an offer to pass it. *Wharton's Am. Crim. Law*, § 1445. 1 *Baldwin's C. C. R.* 367. 2 *Michigan (Gibbs') R.* 550.

UTTER BARRISTERS, (properly OUTER BARRISTERS, Lat. *juris consulti*.) In English practice. The title of the great body of barristers-at-law; pleaders *without* the bar. So called, to distinguish them from *benchers*, or those who have been readers, who are sometimes admitted to plead *within* the bar, as the king's and queen's counsel. *Cowell*. See *Bar, Barrister*.

UTYME. L. Fr. An eighth. *Mem. in Scacc.* 25 Edw. I.

UX'. An abbreviation of *uxor*. 1 *Instr. Cler.* 13.

UXOR. Lat. Wife; a wife; the wife. *Non vir sine uxore, quia agitur de jure uxoris; nec uxor sine viro, quia vir est caput uxoris, et eam defendere debet*; not the husband without the wife, because the action is about the right of the wife; nor the wife without the husband, because the husband is the head of the wife, and is bound to defend her. *Bract.* fol. 202.

*Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habeat, sed vir*; the wife of a thief will not be bound by the act of her husband, because she ought not to accuse her husband, nor disclose his theft or felony, since she has not power of herself, but her husband. 3 *Inst.* 108. *Bract.* fol. 151 b.

*Uxor et filius sunt nomina naturæ*; wife and son are names of nature. *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 350.

## V.

V. A common abbreviation of *versus*, in the titles of causes, and reported cases.

V. F. An abbreviation of *verba fecit*, (spoke.) *Tayl. Civ. Law*, 564.

V. V. B. C. An abbreviation of *vous voies bien coment*, (you see well how.) Common in the Year Books. M. 2 Hen. VI. 1.

VACANT. [L. Fr. *vacant*; Lat. *vacans*, from *vacare*, to be empty, to want.] Unfilled; unoccupied; without a claimant, tenant, or occupier. See *infra*.

**VACANT SUCCESSION.** [Fr. *succession vacante*.] One that is claimed by no person, or where all the heirs are unknown, or where all the known heirs to it have renounced it. *Civil Code of Louis.* Art. 1088. *Hemphill, C. J. 16 Texas R. 502.*

**VACANTIA BONA.** Lat. In the civil law. Goods without an owner, or in which no one claims a property; goods claimed as escheats; escheated goods. *Inst. 2. 6. 4. 1 Bl. Com. 298.*

**VACARE.** Lat. In the civil law. To be vacant; to want; to want or to be without an owner, possessor, or claimant; to be unoccupied, unused, or unemployed. A house was said *vacare*, which was inhabited by no one; a possession, which was held by no one; an inheritance, which was unclaimed by the heirs; a portion of an estate, which was given to no one by will; fruits, that were not gathered; money, that was not employed. *Calv. Lex.*

**VACARE.** Lat. In English ecclesiastical law. To be vacant; to be without an incumbent. Said of a benefice. *Quod ecclesia sive capella non vacat*; that the church or chapel is not vacant. *Fleta*, lib. 5, c. 18, § 1.

**VACARIA.** L. Lat. In old records. A void place or waste ground. *Memo-rand. in Scacc. Mich. 9 Edw. I. Cowell.*

**VACATE.** [from Lat. *vacare*, to be void, or *vacatus*, made void.] In practice. To avoid; to make void; to annul. A court will sometimes *vacate* the proceedings in a cause, as a judgment that has been illegally entered, or an order that has been improvidently granted.

**VACATIO.** Lat. [from *vacare*, to be unoccupied or unemployed.] In the civil law. Exemption; immunity; privilege; dispensation; exemption from the burden of office. *Calv. Lex.*

**VACATION.** [Lat. *vacatio*, from *vacare*, to be unoccupied; to rest from occupation; *justitium*, q. v.] In practice. Intermission of judicial proceedings; the recess of courts; the time during which courts are not held, (*tempus quo vacat à jure dicundo*.) *Spelman.* The period intervening between the end of one term and the beginning of another. *Cowell. 3 Bl. Com. 276.*

**VACATUR.** L. Lat. (It is vacated.) In practice. A rule or order by which a proceeding is vacated; a vacating.

**VACATURA.** L. Lat. [from *vacare*,

to be void.] In old ecclesiastical law. A voidance or vacancy of an ecclesiastical benefice. *Cowell.*

**VACCA.** Lat. In old English law. A cow. *Vacca lactrix*; a milch cow. *Fleta*, lib. 2, c. 76, § 12.

**VACCARIA, Vaccharia, Vacheria.** L. Lat. [from *vacca*, a cow; L. Fr. *vacherie*.] In old English law. A cow-house. *Fleta*, lib. 2, c. 41, § 13. A dairy-house. *Co. Litt. 5 b.* A vachary, vacchary, or vac-cary. *Cowell.*

**VACCARIUS.** L. Lat. [from *vacca*, q. v.] In old English law. A cow-keeper or cow-herd. *Fleta*, lib. 2, c. 86.

**VACHIVIA.** L. Lat. In old records. A dairy. *Cowell.*

**VACQUER.** L. Fr. To be at leisure. *Kelham.*

**VACUUS.** Lat. In the civil law. Empty; void; vacant; unoccupied. *Calv. Lex.*

In old practice. Not followed up; not prosecuted. *Fleta*, lib. 5, c. 11, § 4.

**VADARI.** Lat. In the civil law. To give, or put in bail, or sureties (*vades*) for one's appearance in court. *Calv. Lex.*

To require bail; to hold to bail. *Id.*

**VADELECT.** In old English law. A servant; a ministerial officer. *Cowell*, voc. *Valect.*

**VADERE.** Lat. To go. *Contra mentem vadere*; to go against the mind. A phrase applied in the old books to those who knowingly, or intentionally uttered falsehood, or swore falsely. *Se pejerant, quia contra mentem vadunt*; they perjure themselves because they go against their mind or conscience. *Bract. fol. 288 b.*

**VADES.** Lat. [plur. of *vas*, a pledge.] In the civil law. Pledges; sureties; bail; security for the appearance of a defendant or criminal in court. *Calv. Lex.*

**VADIA.** L. Lat. In old English law. Wages. *Et tres ob' ad vadia trium servientium suorum*; and three farthings for the wages of his three servants. *Fleta*, lib. 2, c. 10.

**VADIARE.** L. Lat. [from *vadium*, gage.] In old English law. To gage; to wage; to give gage or security. See *infra*.

**VADIARE DUELLUM.** L. Lat. In old English and Scotch law. To wage or gage the *duellum*; to wage battel; to give pledges mutually for engaging in the trial by combat. *Si autem per corpus suum intret in defensionem, nihil excipiendo, sta-*

*tim vadietur inter eos duellum*; if he go into the defence by his body, making no plea, battel shall immediately be waged or gaged between them. *Bract.* fol. 157. *Reg. Maj.* lib. 4, c. 2. *Skene de Verb. Sign.* See *Vadium*, *Wager of battel*.

**VADIARE LEGEM.** L. Lat. In old English law. To wage law; to give gage or security to make one's law at a day assigned. *Glanv.* lib. 1, c. 9. *Spelman*, voc. *Lex.* *Admissus fuisset ad vadiandum et faciendum legem suam*; was admitted to wage and make his law. *Reg. Orig.* 116. *Vadiata lege, habebit diem ad faciendam legem*; law being waged, he shall have a day to make law. *Bract.* fol. 156 b. *Fleta*, lib. 2, c. 44, § 2. See *Wager of law*.

**VADIATIO.** L. Lat. [L. Fr. *gager*.] In old English law. *Wager*. *Vadiatio duelli*; wager of battel, (q. v.) *Vadiatio legis*; wager of law, (q. v.) 3 *Bl. Com.* 341. *Fleta*, lib. 2, c. 53, § 2.

**VADIMONIUM.** Lat. In the Roman law. Bail or security; the giving of bail for appearance in court; a recognizance. *Calv. Lex.*

**VADIUM.** L. Lat. [from Lat. *vades*, (q. v.); L. Fr. *gage*.] In old English law. Gage; security to do some act, as to engage in the duellum, to appear in court, &c.; security by pledge of property. *Dat appellatus vadium se defendendi, et appellator vadium disrationandi*; the appellee gives gage to defend himself, and the appellor gage to make good his charge. *Bract.* fol. 137. 3 *Bl. Com.* 341. According to *Fleta*, the word signifies peace, (*vadium pacem significat*.) *Fleta*, lib. 2, c. 47, § 30.

*Per vadium ponere*; to put by gage; to attach a defendant by taking gage, that is, certain of his goods, which he forfeited if he did not appear. 3 *Bl. Com.* 280. *Pone per vadium et salvos plegios*; put by gage and safe pledges. *Id. ibid.*

*In vadio exponere*; to put in pledge; to pawn. *Cowell.*

**VADIUM MORTUUM.** L. Lat. [Fr. *mort gage*.] A dead gage or pledge; a mort gage; a mortgage.

**VADIUM**, (plur. **VADIA**.) L. Lat. In old records. Wages; salary, or other reward of service upon compact or covenant. *Cowell.* See *Vadia*.

**VADUM.** Lat. In old records. A ford, or wading place. *Vadibilis*; fordable. *Cowell.*

**VAER.** L. Fr. [from Lat. *vadere*.] To go. *Kelham.* *Va*; goes. L. Fr. *Dict.*

**VAGABOND.** Fr. and Eng. [from Lat. *vagabundus*, from *vagari*, to wander.] A wandering person; one who habitually goes about from place to place; one who has no settled residence or domicile. *Les vagabonds sont les gens sans domicile*; vagabonds are people without a domicile. *Vattel*, liv. 1, c. 19, s. 219. A vagabond is said to be a person who, without travelling in quest of a domicile, has really and truly no certain domicile at all. *Phillimore on Domicil*, 23. See *Vagabundus*.

In English and American law, *vagabond* is always used in a bad sense, denoting one who is without a home; a strolling, idle, worthless person. Vagabonds are described in old English statutes as "such as wake on the night and sleep on the day, and haunt customable taverns and ale-houses, and routs about; and no man wot from whence they came, nor whither they go." 4 *Bl. Com.* 169. Rogues and vagabonds are classed together by statutes 17 Geo. II. c. 5; 5 Geo. IV. c. 83; 1 & 2 Vict. c. 38. 4 *Steph. Com.* 309. In American law, the term *vagrant* is employed in the same sense. See *Vagrant*.

**VAGABUNDUS.** L. Lat. [from *vagari*, to wander.] In public law. A wandering person; one who has no settled residence. *Vagabundum nuncupamus eum qui nullibi domicilium contraxit habitationis*; we call him a *vagabond* who has nowhere contracted a domicile of residence. *Carpzovius*, tit. 3, art. 1, s. 65. *Phillimore on Domicil*, 23, note.

**VAGRANT.** A wandering, idle person; a strolling or sturdy beggar. A general term, including, in English law, the several classes of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. 4 *Steph. Com.* 308, 309.

In New-York, all idle persons who, not having visible means to maintain themselves, live without employment; all persons wandering abroad and lodging in taverns, groceries, beer-houses, out-houses, market-places, sheds or barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, highways, passages, or other public places, to beg or receive alms, shall be deemed *vagrants*. 1 *Rev. Stat.* [632,] 640, 641, § 1.

**VAGRANT ACT.** The English statute of 5 Geo. IV. c. 83. 1 *Chitt. Gen. Pr.* 621.

**VAIL.** L. Fr. Under. *Kelham.* See *Paravail.*

**Vail' q' vail' purr'.** A L. Fr. form of the maxim *valeat quantum valere potest.* *Yearb. M.* 4 Hen. VI. 11.

**VAILLANCE, Vaillaunce.** L. Fr. [from *vailer*, q. v.] Value. *A la vaillaunce*; to the value. *Britt.* c. 53. *Fet Assaver*, § 63.

**VAILLER.** L. Fr. To be worth; to be of the value. *Et la chose ne vaille ny de doze deners*; and the thing is not worth twelve pence. *Britt.* c. 15.

**VAILLE.** L. Fr. Sufficient. *Kelham.* Vigil; watch. *Id.*

**VAL.** L. Fr. Down; downwards; under. See *Vail, Paravail.*

**VALE.** Span. In Spanish law. A promissory note. *White's New Recop.* b. 3, tit. 7, c. 5, § 3.

**Valeat quantum valere potest.** It shall have effect as far as it can have effect. A leading maxim in the construction of deeds and other instruments. Expressed at length, **Quando res non valet ut ago, valeat quantum valere potest.** When a thing is of no effect as I do it, it shall have effect as far as it can. Lord Mansfield, C. J. *Cowp.* 600. Or more fully, **Cum quod ago non valet ut ago, valeat quantum valere potest.** When that which I do is of no effect as [or in the particular form in which] I do it, it shall have effect as far as it can. 4 *Kent's Com.* 493. When a deed cannot take effect according to the letter, it will be construed so as it may take some effect or other. *Shep. Touch.* (by Preston,) 87. This maxim has been applied to the effect of a confession of judgment. Van Ness, J. 14 *Johns. R.* 450. It has been applied also to statutes. "Clearly we may say of a statute as much as we do every day of deeds, and other private acts, *valeat quantum valere potest.*" Cowen, J. 6 *Hill's (N. Y.) R.* 48.

**VALECTA, Valetta, Valettus.** L. Lat. [from Fr. *valet*.] In old English law. A body-servant, or attendant, (*qui heri est à persona*;) a valet. *Spelman. Reg. Orig.* 25 b.

A ward of the crown. *De puellis vel valettis qui sunt, vel esse debent, in custodia regis.* *Fleta*, lib. 1, c. 20, § 14. Translated, in old English, valet, valect and vadelect. *Cowell.*

**VALENTIA.** L. Lat. [from *valere*, to be worth, to be of value; L. Fr. *vaillance*.] In old English law. Value; worth. *Ad valentiam*; to the value. *Bract.* fol. 315 b. A common phrase in old indictments for larceny. *Cowell.* A distinction was made between *valentia* and *pretium*, (price.) Thus, where the number of the things taken was to be expressed in the indictment, as of young doves in a dove-house, young hawks in a wood, there must be said, *pretii*, (of the price,) or *ad valentiam*, (to the value;) but of divers dead things, *ad valentiam*, and not *pretii*. *West's Symboleog.* part 2, tit. Indictment, sect. 70. *Cowell.* *Fleta* uses *valentia* and *valor* in close connection. *Ad valentiam veri valoris*; to the worth of the true value. *Fleta*, lib. 3, c. 9, § 4.

**VALERE.** Lat. To be strong; to have strength, force, effect or validity; to be effectual or operative; to be good or valid in law. *Fleta*, lib. 3, c. 9, § 6. See **Valeat quantum, &c.** *Perinde valere.*

To be of value; to be worth. See *Valentia, Valor.*

**VALESHERIA.** L. Lat. In old English law. Walleschery, or Welschery; the fact of being a Welshman. See *Wallesheria.*

**VALET, Valect, Vadelect.** In old English law. A servitor or gentlemen of the privy chamber, according to Camden. In the accounts of the Inner Temple, it is used for a benchers clerk or servant. *Cowell* calls it a French word.

Anciently, a name specially denoting young gentlemen, though of great descent or quality, but afterwards given to those of the rank of yeomen. *Selden's Tit. of Honour*, 831. See *Stat.* 20 Ric. II. st. 1, c. 2. In Borel's Glossary it is said that the word was anciently applied to the king's eldest son. See *Barringt. Obs. Stat.* 344, note [f.]

**VALOR.** Lat. [from *valere*, to be worth.] In old English law. Value; worth; rate; a rate; a valuation. See *infra.* *Ad valorem*, (q. v.) is a phrase still used.

**VALOR BENEFICIORUM.** Lat. In English law. A rate or valuation of benefices, or spiritual preferments. 1 *Bl. Com.* 284.

**VALOR MARITAGII.** L. Lat. In old English law. Value of marriage. *Statute of Merton*, c. 6. If an infant ward of a guardian in chivalry refused a match tendered by the guardian, he or she forfeited

the value of the marriage (*valorem maritaggi*.) to the guardian; that is, so much as a jury would assess, or any one would *bonâ fide* give to the guardian for such an alliance. 2 *Bl. Com.* 70. Called, in Scotch law, *avail of marriage*. *Bell's Dict.*

VALOUR. O. Eng. Value. "Of smal substance, and of no valour." *Stat. 8 Hen. VI. c. 7.* "To the valoure of fourty shelynges by yere." *Stat. 10 Hen. VI. c. 2.*

VALUABLE CONSIDERATION. A consideration which the law esteems an equivalent for a grant, such as money, marriage, or the like. 2 *Bl. Com.* 297. Marriage is a valuable consideration, but, in order to support a conveyance, it must be prospective, or contemporaneous with the deed. See 2 *Selden's R.* 342, 344.

VALUE RECEIVED. In mercantile law. A phrase usually employed in a bill of exchange or promissory note, to denote that a consideration has been received for it. As to its effect, see *Story on Bills*, §§ 63, 64. "The object of inserting these words is to show that it is not an accommodation bill, but made on a valuable consideration given for it by the payee." Bayley, J. 3 *M. & S.* 353.

VALUED POLICY. In insurance law. A policy expressing the value which has been set on the ship or goods insured, in the nature of liquidated damages.\* 3 *Kent's Com.* 272, 273. A policy is *valued*, when the parties, having agreed upon the value of the interest insured, in order to save the necessity of further proof, have inserted the valuation in the policy, in the nature of liquidated damages. 1 *Duer on Ins.* 97. See 1 *Arnould on Ins.* 303, (309, Perkins' ed.)

VALVASINI. L. Lat. In feudal law. A name given to the *valvasores minores*. *Feud. Lib.* 2, tit. 10.

VALVASOR, *Valvassor*, *Vavassor*, *Vavassor*. L. Lat. [from *vassalus*, a vassal, according to some feudists; from *valva*, a door, according to others; from Sax. *wal*, a wall or rampart, according to Spelman, conveying the idea of *guard*.] In feudal and old English law. A principal vassal, not holding immediately of the sovereign, but of those who so held; a vassal of the second degree or rank; or of a rank next to the *capitanei*. *Feud. Lib.* 1, tit. 7. *Lib.* 2, tit. 10. *Spelman*. They were also designated as *valvasores majores*, to distinguish them from *valvasores minores*, who held under them. *Id.* In the Books of Feuds three degrees

are mentioned, *majores*, *minores*, and *mini-mi*. *Feud. Lib.* 1, tit. 7, § 1; tit. 14, § 1; tit. 15. The *valvasores minores* were also termed *valvasini*. *Lib.* 2, tit. 10.

*Valvasores*, however, was a term sometimes used to denote those who held immediately of the king, (*qui à rege tenent immediate*) or *capitanei*, as they were otherwise called. *Spelman*.

*Valvasor* is mentioned by Lord Coke and Blackstone as an ancient name or title of dignity in England, next beneath a peer. 2 *Inst.* 667. 1 *Bl. Com.* 403. In Bracton the word is written *vavassor*, (q. v.)

*Vana est illa potentia quæ nunquam venit in actum*. That power is vain [idle or useless] which never comes into action, [which is never exercised.] 2 *Co.* 51.

*Vani timores sunt æstimandi, qui non cadunt in constantem virum*. Those are to be regarded as idle fears which do not affect a steady [firm or resolute] man. 7 *Co.* 27. See *Timor*.

VANTARIUS. L. Lat. In old records. A fore-footman. *Spelman*. *Cowell*.

VARDA. L. Lat. In old Scotch law. Ward; custody; guardianship. Answering to *warda*, in old English law. *Spelman*, quoting *Skene*. It had also the sense of *award*, (Sc. *waird*.) *Skene de Verb. Signif.*

VARECH, *Vraicq*. Fr. In French law. Sea-weed. *Ord. Mar.* liv. 4, tit. 10. Otherwise called *sar* and *goüesmon*. *Id. ibid.*

VARENNA. L. Lat. In old Scotch law. A warren. Answering to *wareнна*, in old English law. *Spelman*, quoting *Skene*.

VARRANTIZATIO. L. Lat. In old Scotch law. Warranty. *Crag. de Jur. Feud.* 152.

VAS. Lat. In the civil law. A pledge; a surety; one who became bail or surety for another in a criminal proceeding or civil action. *Calv. Lex*. The plural *vades*, (q. v.) was more commonly used.

VASALLUS. L. Lat. In feudal law. A vassal; the grantee of a fief; a feudatory. *Feud. Lib.* 1, tit. 26. *Lib.* 2, tit. 2, *et passim*. Skene writes the word, *vassallus*.

VASLETTUS. L. Lat. A valet or ward. *Cowell*. *Spelman*.

VASSAL. [L. Lat. *vasallus*, *vassallus*, from *vassus*, q. v.] In feudal law. The grantee of a fief, feud or fee; one who held of a superior or lord; a fendal tenant; a

feudatory. 2 *Bl. Com.* 53. 1 *Robertson's Charles V.* Appendix, Note viii. *Esprit des Lois*, liv. 30, c. 16.

VASSAL. In Scotch law. A tenant; one who holds of a superior; the grantee or holder of a feu. 1 *Forbes' Inst.* part 2, p. 110. *Ersk. Pr.* b. 2, tit. 3, § 3.

VASSATICUM. L. Lat. In feudal law. Vassalage; the service of a vassal or tenant; feudal service. *Spelman*.

VASSELERIA. L. Lat. Vassalage; the tenure of vassals. *Cowell*.

VASSUS. L. Lat. [from Welsh *gwās*, a page, according to Sir F. Palgrave; perhaps from the Lat. *vas*, a pledge.] In feudal and old European law. A feudal tenant, or feudatory; a feudal lord. *Esprit des Lois*, b. 30, c. 16. The following passage illustrates the meaning of this word and of *vassalus*, which is supposed to be derived from it: *De vassis dominicis, qui adhuc intra casam serviunt, et tamen beneficia habere noscuntur, statutum est, ut quicumque ex eis cum domino imperatore domi remanserint, vassalos suos casatos secum non retineant; sed cum comite cujus pagenses sunt, ire permittant*; concerning the king's servants who still serve within the house [palace,] and yet are known to have benefices, [feudal estates,] it is ordained that as many of them as shall remain at home with the lord the emperor, shall not keep their own house vassals with them, but shall permit them to go with the count whose countrymen they are. *Capitul.* 2, A. D. 812, art. 7, ed. Balus. tom. 1, p. 494. From this it would appear that *vassus* denoted one who held immediately of the king, and *vassallus*, an inferior feudatory, or vassal proper.

VASTITAS. L. Lat. [from *vastum*, q. v.] In old English law. A waste. *Fleta*, lib. 4, c. 22, § 6.

VASTUM. L. Lat. [L. Fr. *gast*.] In old English law. Waste. *Stat. Marlbr.* c. 17. *Item de hoc quod dicit vastum et exilium, sciendum quod non sunt referenda ad eundem intellectum, sed vastum et destructio fere idem sunt, quia convertibiliter se habent vastum et destructio, et vastum idem est quod destructio, et è converso, et se habent ad omnem destructionem generaliter*; also, as to this that he says, "waste and exile," it is to be known that the words are not to be referred to the same meaning, but *waste* and *destruction* are almost the same thing, because *waste* and *destruction* are convertible, and *waste* is

the same as *destruction*, and è converso, and they relate to every kind of *destruction* generally. *Bract.* fol. 316 b. *Vastum* and *destructio* are both mentioned in *Magna Charta*, and in the statute of *Marlbridge*, (c. 17.) *Accedat ad locum vastatum et inquirat de vasto facto*; he shall go to the place wasted, and inquire of the waste done. *Stat. Westm.* 2, c. 14. *Sine destructione et vasto hominum vel rerum*; without *destruction* and waste of men or of things. *Mag. Cart.* c. 4.

VASTUM. L. Lat. In old records. A waste or common lying open to the cattle of all tenants who have a right of commoning. *Paroch. Antiq.* 171. *Cowell*.

VASTUM FORESTÆ VEL BOSCI. L. Lat. In old records. Waste of a forest or wood. That part of a forest or wood, wherein the trees and underwood were so destroyed that it lay in a manner waste and barren. *Par. Antiq.* 351, 497. *Cowell*.

VAULT. L. Fr. [from *vailer*, to be worth, to be of value or force.] In old English law. Is worth. *Litt.* sect. 251. *Id.* sect. 255. *Ne vault*; it avails not. *Vault riens*; it avails nothing. *Yearb.* 26 Hen. VIII. 4. *Le plea ne vault*; the plea is bad. *Dyer*, 29.

VAVASOR, *Valvasor*. L. Lat. [see *valvasor*.] In old English law. The vassal or tenant of a baron; one who held under a baron, and who had also tenants under him. *Vavassores Roberti Fossard reddunt comptum de Lxiii s. 4d.*; the vavasors of Robert Fossard render an account of 63s. 4d. *Rot. Pip.* de an. 5 *Regis Steph.* Everwicscire. *Et si amodo exurgat placitum de divisione terrarum, si interest barones meos dominicos, tractetur placitum in curiâ meâ; et si est inter vavassores istorum dominorum, tractetur in comitatu*; and if a plea [controversy] should arise respecting the division of lands, if it concern my barons, the plea [suit] shall be litigated in my court, and if it be between the vavasors of those lords [barons] it shall be managed in the county court. *Chart. Hen. I.* apud *Spelman*, voc. *Valvasor*.

One who in dignity was next to a baron; a title of dignity next to a baron. *Camd. Brit.* 109. See *Valvasor*. Bracton, in enumerating the various ranks of persons under the king, mentions them in the following order: dukes, counts or earls, barons, magnates or vavasors, and knights,

(*duces, comites, barones, magnates sive vavasores, et milites.*) *Bract.* fol. 5 b. And again, immediately after describing barons, as powerful men under the king (*potentes sub rege.*) he proceeds to a description of vavasors as men of great dignity, (*virī magnæ dignitatis.*) adding the following etymology of the word: *Vavasor enim nihil melius dici poterit quam vas sortitus ad valetudinem*; for a vavasor cannot be better described than a vessel or pledge (*vas*) chosen for strength. *Id. ibid.*

The term *vavasor* first came into use in England after the Conquest, being another form of *valvasor*, which was employed in the feudal law of the continent. *LL. Gul. Cong.* l. 24. See *Valvasor*. As a title of dignity, it occurs as late as the time of Chaucer, but afterwards fell into disuse, and is now wholly antiquated. 1 *Bl. Com.* 403. The etymology of the word given by Bracton seems to present *vas*, (a vessel,) *validus*, (strong,) and *sortitus*, (chosen,) as its constituent elements, which is very different from that given of *valvasor*, (q. v.)

**VAVASORY.** [L. Lat. *vavasoria.*] In old English law. The fee of a vavasor; a lesser fee than a barony. *Bract.* fol. 93 b. *Fleta*, lib. 5, c. 23, § 14.

**VAVASOUR.** L. Fr. In old English law. A vavasor. *LL. Gul. Cong.* l. 24. A word used by Chaucer. See *Countor*.

**VE.** L. Fr. [from *veier*, to see.] Saw; seen. *Kelham.*

**VE.** L. Fr. [contr. of *vale*.] Worth. *Kelham.*

True, (contr. of *verey*.) *Id.*

**VEAGE.** L. Fr. A voyage. *Kelham.* See *Viage*.

**VECORIN.** Lomb. In old Lombardic law. The offence of stopping one on the way, (Germ. *hægeren*;) forestalling. *Spelman.* The Sax. *withercoren* is translated by *Spelman*, *rebellis*; rebel, rebellious.

**VECTIGAL.** Lat. [from *vehere*, to carry.] In the civil law. A custom or impost upon goods brought into, or carried out of a state, (*quod pro rebus civitati invecitis vel evectis publico solvitur.*) *Calv. Lex.*

In a general sense, a tax or tribute of any kind, paid for the use of the state. *Id.* See *Dig.* 50. 16. 17. 1. *Id.* 6. 3. *Id.* 39. 4. See a list or tariff of articles subject to this imposition. *Id.* 39. 4. 16. 7. •

**VECTURA.** L. Lat. [from *vehere*, to carry.] In maritime law. Freight. *Loc-*

*cen. de Jur. Mar.* lib. 3, c. 6, § 7, et seq.

**VEE.** L. Fr. [from *veer*, to forbid.] In old English law. Refusal; refusal to deliver or return a thing. *Defende tort et force, et la torcenouse detenue, et le vee des bestes avaunditz*; defends the wrong and the force, and the wrongful taking, and the wrongful detention, and the refusal of the beasts aforesaid. *Britt.* c. 2. *Respoynce al vee*; answer to the refusal. *Id. ibid.*

**VEE DE NAME.** L. Fr. [L. Lat. *vetitum namium.*] In old English law. Refusal of a thing distrained; refusal to deliver or return a thing taken as a distress; sometimes translated *withernam*, (q. v.) *Plees de vee de name.* *Britt.* cc. 19, 20, 103. See *Vetitum namium*.

**VEEL.** L. Fr. Old. *Veelez viscountz*; old sheriffs. *Kelham.*

**VEER.** L. Fr. [from Lat. *videre*.] In old English law. To see. *Jesques à taunt que home pusse veer les estoilles en la firmament*; until a man may see the stars in the sky. *Britt.* c. 22. Another form of *veier*, (q. v.)

**VEER.** L. Fr. [from Lat. *vadere*.] In old English law. To go; to proceed. *En evant veer*; to go forward. *Kelham.* *Veet la coroner*; let the coroner go. *Id.* *Qui il veet quite*; that he go quit. *Britt.* c. 68.

**VEER.** L. Fr. [from Lat. *vetare*.] To forbid; to refuse. See *Vee*.

**VEFFETE.** L. Fr. In old English law. Widowhood. *Yearb.* T. 1 Edw. II. 18.

**VEFUE.** L. Fr. Widow; a widow. *Kelham.*

**VEIER.** L. Fr. [from Lat. *videre*.] To see. *Veit*; sees. *Kelham.* *Veie*; seen. *Id.*

**VEIES, Veez.** L. Fr. (plur. of *vee*.) Distresses forbidden to be replevied; the refusing to let the owner have his cattle which were distrained. *Kelham.*

**VEIF, Vefve, Vefue.** L. Fr. A widow. *Kelham.* *Veifuage*; widowhood. *Id.*

**VEIGNER, Veiner.** L. Fr. [from Lat. *venire*.] To come. *Kelham.*

**VEISIN.** L. Fr. [from Lat. *vicinus*.] A neighbor. *Par les taxacions de ascun de ses bone veisins*; by the taxations, [assessment] of some of his good neighbors. *Britt.* c. 27.

**VEJOURS.** L. Fr. [from *veier*, *veoir*, to see; L. Lat. *visores*.] In old English

practice. Viewers; persons sent by the court to take *view* of any place in question, for the better decision of the right. *Cowell*. See *Visores*.

VEL. Lat. Or, (aut.) *Calv. Lex*.

And, (et.) *Id*.

At least, (saltem.) *Id*.

Also, (etiam.) *Id*.

When, (quando.) *Id*.

As, (veluti.) *Id*.

VELABRUM. L. Lat. In old English law. A toll-booth. *Cro. Jac.* 122.

VELITIS JUBEATIS QUIRITES? Lat. Is it your will and pleasure, Romans? The form of proposing a law to the Roman people. *Tayl. Civ. Law*, 155.

VELLE. Lat. In the civil law. To will; to be willing; to consent. *Calv. Lex*.

Velle non creditur qui obsequitur imperio patris vel domini. He is not considered to will, who obeys the command of a father or master. *Dig.* 50. 17. 4. See *Ejus est nolle*, &c.

VENARIA. Lat. [from *venari*, to hunt.] In old English law. Animals set apart for hunting, (*animalia venatui dicata*;) not animals of the forest, but of the field, (*campestris*;) as hares, partridges, &c. *Spelman*.

VENATIO. L. Lat. [from *venari*, to hunt.] In old English law. The chase, or hunt. *Cowell*.

The prey taken in the chase; venison. *De viridi et venatione*; of vert and venison. *Paroch. Antiq.* 73. *Convictus de captione venationis*; convicted of the taking of venison. *Cart. de Forest.* c. 10.

VENDEE. The person to whom a thing is sold; a buyer or purchaser; the correlative of *vendor*, (q. v.)

VENDER, *Vendre*. L. Fr. [from Lat. *vendere*, q. v.] In old English law. To sell; to vend. *Vendu*; sold. *Et vendu en fee*; and sold in fee. *Britt.* c. 77.

VENDERE. Lat. In the civil and old English law. To sell; to vend. *Dig.* 18. 1. *Mag. Cart.* 9 Hen. III. c. 32. *Si tibi vendam quod tibi accommodavi, aut apud te deposui vel ad firmam vel ad vitam, et si quod ad vitam, vendo tibi in feodo*; if I sell to you that which I have loaned to you, or deposited with you either to farm [i. e. for a term of years,] or for life; and if I sell to you in fee, what I have [leased you] for life. *Bract.* fol. 41. *Vendens eandem rem duobus falsarius est*; he who sells the same thing to two persons is a cheat. *Jenk. Cent.* 107.

VENDICARE. Lat. In the civil and old English law. To claim a thing as one's own; to assert a right to a thing. To take a thing as one's own. *Calv. Lex*. *Ubi flumen mihi abstulit meum prædium per alvei constitutionem, deinde redit ad antiquum alveum, de jure stricto, in prædio quodam [quondam] meo nihil possum vendicare, cedit enim iis qui prope ripam prædia habent*. Where a river, in consequence of the form of its channel, has carried away my land, and afterwards returns to its former channel, in strict law I can claim no right in the land that before was mine, for it belongs to those who have the lands on the bank. *Bract.* fol. 9 b. *Fleta*, lib. 3, c. 2, § 10.

VENDICATIO. Lat. [from *vendicare*, q. v.] In old English law. A claim. *Fleta*, lib. 2, c. 60, § 21.

VENDITÆ. L. Lat. [from *vendere*, to sell.] In old European law. A tax upon things sold in markets and public fairs. *Spelman*. *Bignonius*.

VENDITIO. Lat. [from *vendere*, to sell.] In the civil law. In a strict sense, sale; the act of selling; the contract of sale, otherwise called *emptio venditio*. *Inst.* 3. 24. *Dig.* 18. 1. *Calv. Lex*.

In a large sense,—any mode or species of alienation; any contract by which the property or ownership of a thing may be transferred. *Id*.

VENDITIONI EXPONAS. L. Lat. (You expose to sale.) In practice. A judicial writ directed to a sheriff, commanding him to expose to sale goods which he has already taken under an execution. So termed, from the emphatic words of the Latin form. *Reg. Jud.* 33 b. *Cowell*. It properly issues on a return made by the sheriff to a *fieri facias*, that he has taken goods which remain in his hands *unsold for want of buyers*. 2 *Tidd's Pr.* 1020.

VENDITOR. Lat. [from *vendere*, to sell.] In civil and old English law. A seller; a vendor. *Inst.* 3. 24. *Cod.* 4. 54. *Bract.* fol. 41.

VENDITOR REGIS. L. Lat. In old English law. The king's seller or salesman; the person who exposed to sale those goods and chattels which were seized or distrained to answer any debt due to the king. *Cowell*.

•VENDITRIX. Lat. In the civil law. A female vendor. *Cod.* 4. 51. 3.

VENDOR. [Lat. *venditor*.] A seller;

the person who sells a thing; the correlative of *vendee*.

**VENDOR'S LIEN.** An equitable lien allowed the vendor of land upon the land sold, for the purchase money.\* *Miller's Equit. Mortg.* 4—6. 4 *Kent's Com.* 151, 152. The doctrine of a *vendor's lien*, in its general statement, is, that the vendor of land, if he has taken no security, although he has made an absolute conveyance by deed, with a formal acknowledgment in the deed or on the back of it, that the consideration has been paid, yet retains an equitable lien for the purchase money, unless there be an express or implied waiver and discharge of it; and this lien will be enforced in equity against the vendee, volunteers, and all others claiming under him with notice; that is, against all persons except *bonâ fide* purchasers without notice. 1 *White's Eq. Cas.* 222, Am. ed. note, citing 9 *Cowen's R.* 316, 318. 2 *Rand. R.* 428, 429. 3 *Bibb's R.* 183, 184. 6 *B. Monroe's R.* 74, 75. 5 *Ohio R.* 35, 39. 6 *Yerger's R.* 50. 4 *Blackford's R.* 339, 340. 4 *Scammon's R.* 148, 151. 5 *Alabama R.* 363, 364. 1 *Smedes & Marsh. R.* 197, 206. 4 *Missouri R.* 253. The doctrine, as laid down in the words of Lord Eldon, in the leading case of *Mackreth v. Symmons*, (15 *Ves. Jun.* 329,) is, that "where the vendor conveys, without more, though the consideration is upon the face of the instrument expressed to be paid, and by a receipt endorsed upon the back, if it is the simple case of a conveyance, the money or part of it not being paid, as between the vendor and the vendee and persons claiming as volunteers, upon the doctrine of this court, which, when it is settled, has the effect of contract, though perhaps no actual contract has taken place, a *lien shall prevail*; in the one case, for the whole consideration, in the other, for that part of the money which was not paid." The principle of the doctrine is thus expressed by the same judge, in the case last referred to: "that a person having got the estate of another, shall not, as between them, keep it and not pay the consideration; and there is no doubt that a third person, having full knowledge that the other got the estate without payment, cannot maintain that, though a court of equity will not permit him to keep it, he may give it to another person without payment."

The doctrine of a *vendor's equitable lien*

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for unpaid purchase-money, upon an absolute conveyance of land, has been adopted in the states of New-York, Maryland, Virginia, Tennessee, Mississippi, Georgia, Alabama, Missouri, Illinois, Indiana, Ohio and Kentucky, and has been recognized in the Circuit and Supreme Courts of the United States. 1 *Mason's R.* 192, 212. 4 *Wheaton's R.* 256. 7 *Id.* 46. In some other states, as Pennsylvania, North Carolina, South Carolina and Massachusetts, it has either been rejected, or never recognized. In Connecticut, Vermont and Delaware, its existence remains undecided and doubtful. See 1 *White's Equity Cases*, 222, Am. ed. note, and the cases there cited.

**VENELLA.** L. Lat. [from *venire*, to go or pass.] In old English law. A narrow way or passage; a lane. *In viis et venellis villæ prædictæ*; in the streets and lanes of the said town. *Reg. Orig.* 267 b. *Spelman*.

**VENEUR.** L. Fr. [Lat. *venator*.] A hunter. *Kelham*.

**VENER.** L. Fr. [from Lat. *venire*, q. v.] In old English law. To come; to appear. *Vener en sa court*; to come, or appear in his court. *Britt. c.* 27. *Vendra*; shall come. *Vent*; comes. *Kelham*. *Come les parties viendront en court*; when the parties shall have come or appeared in court. *Britt. c.* 91.

**VENESON.** L. Fr. In old English law. Venison; deer; animals of the chase. *Britt. c.* 21. See *Venison*.

**VENIA.** Lat. Pardon; forgiveness; indulgence. *Veniæ facilitas incentivum est delinquendi*. Facility of pardon is an incentive to crime. 3 *Inst.* 236.

In the civil law. Favor; privilege; courtesy; permission. *Calv. Lex*. See *Venia ætatis*.

**VENIA ÆTATIS.** Lat. In the civil law. The privilege of age. A privilege granted to a person not of age, by the prince or sovereign, whereby the party is entitled to act, and to have all the powers to act, as if he were of full age. *Calv. Lex. Cod.* 2. 45. *Vicat. Vocab.* *Story's Conf. Laws*, § 60, note. This grant does not, except in special cases, include the power of disposing of real property, but it confers all the other privileges of majority, and prevents the minor from being relieved against acts done by him after he has obtained it. *Macpherson on Infants*, 576. Grants of this kind, called *lettres de bene-*

*fice d'age*, were known to most of the old French *coûtumes*. *Id. ibid.*

The *venia ætatis* is known to the Spanish and Roman Dutch law; but its grant depends upon the conduct and discretion of the minor. *Id. ibid.*

**VENIAUNCE.** L. Fr. In old English law. Vengeance; revenge; an avenging. *Suer veniaunce de la mort par appel de felonie*; to sue or prosecute vengeance for the death, by an appeal of felony. *Britt. c. 1.* See *Id. c. 23.*

**VENIRE.** Lat. In the civil and old English law. To come; to appear; to appear in court, (*comparere in judicio*.) *Calv. Lex. Fleta*, lib. 2, c. 64, § 2. See *Venit*.

To arrive, as a time or day. *Dig. 50. 16. 213.*

To come to, or into; to enter upon, (*adire, accedere, ingredi*.) *Calv. Lex.*

To become subject to. *Id. Venire in crimen*; to be accused of a crime. *Id.*

**VENIRE.** Lat. (To come.) In practice. The name of a writ by which a jury is summoned. Otherwise termed a *venire facias*, (q. v.)

**VENIRE FACIAS.** L. Lat. (You cause to come.) In practice. A judicial writ, directed to the sheriff of the county in which a cause is to be tried, commanding him that he *cause to come* before the court, on a certain day therein mentioned, twelve good and lawful men of the body of his county, qualified according to law, by whom the truth of the matter may be the better known, and who are in no wise of kin either to the plaintiff or to the defendant, to make a jury of the country between the parties in the action, because as well the plaintiff as the defendant, between whom the matter in variance is, have put themselves upon the jury; and that he return the names of the jurors, &c. 2 *Tidd's Pr.* 777, 778. 3 *Bl. Com.* 352. So termed from the emphatic words of the Latin form: *Præcipimus tibi quod venire facias coram justitiariis nostris apud Westmonasterium, à die, &c. duodecim, &c.* We command you that you cause to come before our justices at Westminster, on the day, &c. twelve, &c. *Reg. Jud.* 7, 30 b.

In English practice, though the *venire facias* is always sued out, it is not used; it being the practice of the court to suppose that the jurors have been summoned upon it, and have failed to appear; and upon this fictitious default another writ called a *dis-*

*tringas* is awarded on the record, which is accordingly issued at the same time with the *venire*, and under which the jury are in fact summoned to try the cause. *Steph. Plead.* 80. See *Distringas juratores*.

In the United States, the *venire* has been generally adopted, though in some states it has been dispensed with, except in special cases. 2 *N. Y. Rev. St.* [410,] 331, § 9.

The *venire facias* is a very ancient writ, and was formerly used in England for a great variety of purposes. Bracton mentions a writ of this kind issued to the sheriff to inquire whether a certain grantor of lands was of sound mind, and otherwise of capacity to convey, on the day of the grant. *Bract. fol. 14 b.* Many special writs of *venire* are contained in the Register, but these have long been disused. *Reg. Jud. tabula.*

**VENIRE FACIAS DE NOVO.** L. Lat. (You cause to come anew.) In practice. A second writ of *venire*, to summon another jury for a new trial, commonly called a *venire de novo*. This is the old common law mode of proceeding to a second trial, and differs materially from the granting a new trial, inasmuch as the *venire de novo* is awarded for some defect appearing upon the face of the record, a new trial is granted for matter entirely extrinsic. 2 *Arch. Pr.* 261.

A new *venire*, issued in certain cases where a cause has not been tried. 1 *Arch. Pr.* 183.

**VENISON, Veneson.** L. Fr. and Eng. [from *venatio*, prey taken in hunting.] In English law. Animals of the chase, particularly deer.\* 3 *Bl. Com.* 71. See *Vert.*

**VENIT.** Lat. [from *venire*, q. v.] In old pleading. Comes. The word which expressed the appearance of a defendant in court. See *Venit et defendit*, *Comes and defends*.

**VENIT ET DEFENDIT.** L. Lat. In old pleading. Comes and defends. The proper words of appearance and defence in an action. 1 *Ld. Raym.* 117. *Venit et defendit vim et injuriam*; comes and defends the force and injury. 2 *Show.* 443. *Venit et defendit omnem feloniam, et pacem domini regis infractam*; comes and defends all the felony, and breach of the king's peace. *Bract. fol. 138 b.* See *Fleta*, lib. 4, c. 16, § 6.

● **VENIT ET DICIT.** L. Lat. In old pleading. Comes and says. *Yearb. M.* 1 *Edw. II.* 2. 2 *Salk.* 544.

**VENKU.** L. Fr. In old English law. Vanquished; overcome in judicial combat. *Et si le defendaunt soit venku, si soit le jugement tel, que il soit treyne et pendu, et autrement tormenté à la mort à nostre volonte;* and if the defendant be overcome, the judgment shall be such, that he be drawn and hanged, and otherwise torment-ed to death at our pleasure. *Britt. c. 22.*

**VENTE.** Fr. [from *vendre*, to sell.] In old English law. Sale. *De wast, et de vente et destruction;* of waste, and of sale, and destruction. *Britt. c. 26. Destruction de tenements, exil de villeyns, ou vente des terres. Id. c. 66.*

**VENTER.** Lat. The belly, or womb, (*uterus muliebris*.)

In the civil and old English law. A pregnant woman; a mother; a wife. *Dig. 25. 4. Id. 37. 9. Calv. Lex. Partus sequitur ventrem,* (q. v.) "If a man hath issue two sons by divers *venters*." *Litt. sect. 6.* "If a man hath issue a son and a daughter by one *venter*, and a son by another *venter*, and the son of the first *venter* purchase lands," &c. *Id. sect. 7.*

An unborn child. *Dig. 25. 5. Id. 25. 6. Id. 37. 9. Tayl. Civ. Law, 248. Fleta, lib. 6, c. 23, § 20.*

**VENTRICES.** L. Lat. In old English law. Fanners of threshed grain. *Fleta, lib. 2, c. 82, § 2.*

**VENTRITICUM.** See *Molendinum*.

**VENUE, Visne.** L. Fr. and Eng. [from L. Lat. *visnetum*, neighborhood.] In pleading and practice. A neighborhood; the neighborhood, place or county in which an injury is declared to have been done, or fact declared to have happened. *3 Bl. Com. 294. Steph. Pl. 280.*

The statement in a declaration, of the county in which a fact happened. To "lay a *venue*," is to allege a place. *Id. 281, 283.*

A jury summoned from a particular county or place. "The *venue* was to come from Oxford." *Id. ibid.*

The county in which an action is intended to be tried, and from the body of which the jurors who are to try it are summoned. "To change the *venue*," is to direct the trial to be had in a different county from that where the *venue* is laid. *1 Tidd's Pr. 602, et seq.*

\* \* The term *venue* is particularly applied in pleading, to the statement of the county in the *margin* of the declaration, in

its commencement. It was also applied in England, until recently, to the statement in the *body* of pleadings, of a place at which each traversable fact alleged happened; the rule, as technically expressed, being that every material and traversable allegation should be laid with a *venue*. *Steph. Pl. 281.* But by Reg. Gen. of Hil. Term, 4 Will. IV. it was provided that no *venue* should be stated in the body of the declaration, or in any subsequent pleading. *Id. 287.*

The original and proper form of this word seems to have been *visne*, being that in which it occurs in the oldest reports. *Le brefe de faire venir les 24, fuit del visne de Loundres, et nemy del visne de Friday strete;* the writ to cause the twenty-four to come [the *venire* for the 24 jurors] was of the *visne* of London, and not of the *visne* of Friday street. *Year Book, M. 18 Edw. II. 827.* See *Year Book, P. 12 Ric. II. 641.* *Visne* is used for *venue* as late as 1630. *Trye's Jus. Filiz. 231.* The L. Lat. *visnetum*, used by Bracton, closely corresponds with this form of the word. See *Visnetum. Visinetus* (q. v.) is used in the Register. *Reg. Orig. 33.* *Venew* is an old form given in Cowell and Blount. *Venue* seems properly to denote a coming (from *vener*, to come,) and is so used in the statute of Westminster 1. See *infra*.

**VENUE.** L. Fr. [from *vener*, to come.] In old English law. A coming; a resorting or resort. *Per le venue des graunds gents;* by the resort of great men. *Stat. Westm. 1, c. 1.*

**VER.** The old Scotch form of the Sax. *were*. *Skene ad Reg. Maj. lib. 3, c. 19. Spelman.*

**VERBA.** Lat. (plur. of *verbum*, q. v.) Words. *Verba artis ex arte.* Words of art [are to be taken] according to art. If technical terms are employed in a contract, they are to be taken in a technical sense. *2 Kent's Com. 556, note.*

*Verba accipienda ut sortientur effectum.* Words are to be taken [so as] that they may have effect. *Bacon's Arg. Jurisd. of Marches, Works, iv. 258.*

*Verba æquivoca, ac in dubio sensu posita, intelliguntur digniori et potentiori sensu.* Equivocal words, and such as are put in a doubtful sense, are [to be] understood in the more worthy and effectual sense. *6 Co. 20 a, Gregory's case.* Thus, where "the feast of St. Michael" is spoken of, if there are two feasts, it shall be intended of

the most worthy and notorious feast. *Year Book*, 20 Hen. VI. 17. So if mention be made of "J. S." generally, it shall be intended of the father, or of the eldest son, for they are the most worthy. *Year Book*, 37 Hen. VI. 29 b. 21 Hen. VI. 8, 13 Hen. IV. 4 b. So where "any court of the queen, of record," is spoken of, it shall be intended "one of the four eminent and excellent courts at Westminster." 6 Co. 19 b.

**Verba aliquid operari debent.** Words ought to work or operate somewhat; words ought to have some operation or effect.\* "Words are so to be understood that they work somewhat, and be not idle and frivolous." *Bacon's Max.* 18, in reg. 3. See **Verba cum effectu**, &c. Mr. Duer refers to Rutherford, (vol. 2, 312,) as furnishing an admirable illustration of this rule, in its application to a supposed bequest. A testator devises all his plate, with the exception of 1,000 ounces, to his eldest son, and directs him, within a certain time after his decease, to deliver the 1,000 ounces to his younger son, of such sort, and in such pieces *as he pleases*. The words "as he pleases," may be referred to either son; but apply them to the elder and they are useless, since without them he would have all the discretion they purport to give; but apply them to the younger, and they are rendered effectual, by conferring on him a valuable privilege that otherwise he could not have claimed. 1 *Duer on Ins.* 216.

**Verba fortius accipiuntur contra proferentem.** Words are to be taken most strongly against him who uses them. *Bacon's Max.* 11, reg. 3. "This rule," observes Lord Bacon, "that a man's deeds and his words shall be taken strongliest against himself, though it be one of the most common grounds of the law, is, notwithstanding, a rule drawn out of the depth of reason; for first, it is a schoolmaster of wisdom and diligence in making men watchful in their own business; next, it is author of much quiet and certainty, and that in two sorts: first, because it favoureth acts and conveyances executed, taking them still beneficially for the grantees and possessors; and secondly, because it makes an end of many questions and doubts about construction of words; for if the labour were only to pick out the intention of the parties, every judge would have a several sense, whereas this rule doth give them a way to take the law more certainly one way." *Id. ibid.*

This maxim seems to have been purposefully given by Lord Bacon in its most general terms; and is so quoted by Blackstone. 2 *Bl. Com.* 280. Lord Coke confines it to written instruments, or *charters*, and the maxim is generally quoted after him, **Verba chartarum fortius accipiuntur contra proferentem**. The words of charters [deeds or written instruments,] are taken most strongly against him who uses them. *Co. Litt.* 36 a. 13 *East*, 80. *Broom's Max.* 254, [456.] It is applied in the construction of pleadings, as well as of conveyances and contracts. *Id.* 254—258, [461—464.] Being, however, a rule of some strictness and rigor, it is, according to Bacon, "the last to be resorted to, and is never to be relied upon but where all other rules of exposition of words fail; and if any other come in place, this giveth place." *Bac. Max.* 16. 2 *Bl. Com.* 380. See 1 *Duer on Ins.* 210, 211.

**Verba cum effectu sunt accipienda.** Words are to be taken with effect, or so as to have effect. *Bacon's Max.* 18, in reg. 3. This maxim is derived from the civil law. *Calv. Lex.* See **Verba aliquid operari debent**.

**Verba debent intelligi ut aliquid operentur.** Words ought to be understood so as to have some operation. 8 Co. 94 a, *Edward Fox's case*.

**Verba dicta de persona intelligi debent de conditione personæ.** Words spoken of a person are to be understood of the condition of the person. 2 *Roll. R.* 72.

**Verba generalia generaliter sunt intelligenda.** General words are to be understood generally. 3 *Inst.* 76. That which is generally spoken shall be generally understood, unless qualified by some special subsequent words. *Shep. Touch.* 88. *Co. Litt.* 42 a. But see the following maxim.

**Verba generalia restringuntur ad habilitatem rei vel personæ.** General words are to be restricted to the capacity of the thing or person, [of which they are spoken.] "All words, whether they be in deeds or statutes, or otherwise, if they be general and not express and precise, shall be restrained to the fitness of the matter or person. As if I grant common *in omnibus terris meis* [in all my lands] in D. and I have in D. both open grounds, and several, [enclosed,] it shall not be stretched to common in my several, much less in my gardens and orchards. *Perk. pl.* 103. So, if I grant to a man *omnes arbores meas cres-*

*centes super terras meas in D.* [all my trees growing upon my lands in D.] he shall not have apple trees or other fruit trees growing in my gardens or orchards, if there be any other trees upon my ground. 14 *Hen. VIII.* 2. So, if I grant to J. S. an annuity of x. l. a year, *pro consilio impenso et impendendo*, [for his counsel given and to be given.] if J. S. be a physician, it shall be understood of his counsel in physic; and if he be a lawyer, of his counsel in law. 41 *Educ.* III. 6, 19. So, if I do let a tenement to J. S. near by my dwelling-house in a borough, provided that he shall not erect or use any shop in the same without my license, and afterwards I license him to erect a shop, and J. S. is then a miller, he shall not, by virtue of these general words, erect a joiner's shop." *Bacon's Max.* 50, 51, reg. 10. See, for other illustrations, *Broom's Max.* 275—278, [501—505.] This is a maxim of the civil law, as Lord Bacon mentions in another passage. "It is a rule that general words shall never be stretched too far in intendment, which the civilians utter thus: *Verba generalia restringuntur ad habilitatem personæ vel ad aptitudinem rei.*" *Bacon's Max.* 17, in reg. 3.

*Verba in differenti materia per prius, non per posterius, intelligenda sunt.* Words on a different subject are to be understood by what precedes, not by what comes after. A maxim of the civil law. *Calv. Lex. Spiegelius.*

*Verba intelligenda sunt in casu possibili.* Words are to be understood in [of] a possible case. A maxim of the civil law. *Calv. Lex. Accursius in Inst.* 3. 14, De obligationibus, § 1.

*Verba intentioni, et non e contra, debent inservire.* The words [of an instrument] ought to subserve the intention of the party, and not the reverse, [i. e. the intention, the words.] 8 *Co.* 94 a, *Edward Fox's case.* One of the most ancient and important maxims of construction of deeds as well as wills. 1 *Spence's Chancery*, 527. The construction should be as near to the minds and apparent intents of the parties, as possible it may be, and law will permit. *Shep. Touch.* 86. Otherwise more briefly expressed, *Verba intentioni debent inservire.* 2 *Bl. Com.* 379. 2 *Kent's Com.* 555. The mutual intention of the parties to the instrument is the great, and sometimes the difficult object of inquiry, when the terms of it are not free from ambiguity. To reach

and carry that intention into effect, the law, when it becomes necessary, will control even the literal terms of the contract, if they manifestly contravene the purpose; and many cases are given in the books, in which the plain intent has prevailed over the strict letter of the contract. *Id.* 554, and note.

*Verba ita sunt intelligenda, ut res magis valeat quam pereat.* The words [of an instrument] are to be so understood, that the subject matter may rather be of force than perish, [rather be preserved than destroyed, or, in other words, that the instrument may have effect, if possible.] *Bacon's Max.* 17, in reg. 3. *Plowd.* 156. 2 *Bl. Com.* 380. 2 *Kent's Com.* 555. A leading maxim of construction, very commonly expressed by its latter clause, *Ut res magis valeat quam pereat*, (q. v.) and sometimes still more briefly, *Ut res valeat.*

*Verba mere æquivoca, si per communem usum loquendi in intellectu certo sumuntur, talis intellectus præferendus est.* [In the case of] words merely equivocal, if they are taken by the common usage of speech in a certain sense, such sense is to be preferred. A maxim of the civil law. *Calv. Lex. Zasius. Prateus.*

*Verba nihil operari melius est quam absurde.* It is better that words should have no operation at all, than [that they should operate] absurdly. A maxim of the civil law. *Calv. Lex. Baldus. Oldendorpius.*

*Verba non tam intuenda, quam causa et natura rei, ut mens contrahentium ex eis potius quam ex verbis appareat.* The words [of a contract] are not so much to be looked at, as the cause and nature of the thing [which is the subject of it,] in order that the intention of the contracting parties may appear rather from them than from the words. A maxim of the civilians. *Calv. Lex. Baldus. Oldendorpius. Prateus.*

*Verba offendi possunt, imo ab eis recedere licet, ut verba ad sanum intellectum reducuntur.* Words may be opposed [taken in a contrary sense,] nay, we may disregard them altogether, in order that the [general] words [of an instrument] may be restored to a sound meaning. A maxim of the civilians. *Calv. Lex. Spiegelius. Prateus.*

*Verba ordinationis quando verificari possunt in sua vera significatione, trahi ad extraneum intellectum non debent.* When the words of an ordinance can be carried into effect in their own true meaning, they ought not to be drawn to a foreign intend-

ment. A maxim of the civilians. *Calv. Lex. Spiegelius.*

**Verba posteriora propter certitudinem addita, ad priora quæ certitudine indigent, sunt referenda.** Subsequent words, added for the purpose of certainty, are to be referred to the preceding words which require the certainty. *Wingate's Max.* 167, max. 53. *Broom's Max.* 253, [449.]

**Verba pro re et subjecta materia accipi debent.** Words ought to be understood in favor of the thing and subject matter. A maxim of the civilians. *Calv. Lex. Baldus. Prateus.*

**Verba quantumvis generalia, ad aptitudinem restringuntur, etiamsi nullam aliam paterentur restrictionem.** Words, however general they may be, are restrained for the purpose of adaptation, even though they may admit of no other kind of restriction. A maxim of the civilians. *Zasius. Spiegelius. Prateus.*

**Verba quæ aliquid operari possunt non debent esse superflua.** Words which can have any kind of operation, ought not to be considered superfluous. *Calv. Lex. Spiegelius. Prateus.*

**Verba relata hoc maxime operantur per referentiam, ut in eis inesse videntur.** Related words [words connected with others by reference] have this particular operation by the reference, that they are considered as being inserted in those [clauses which refer to them.] *Co. Litt.* 9 b, 359 a. Lord Ellenborough, C. J. 14 *East*, 568. Words to which reference is made in an instrument, have the same effect and operation as if they were inserted in the clauses referring to them. *Broom's Max.* 288, [521.] Lord Coke gives the following illustration of this maxim: "If a father enfeoff a son, to have and to hold to him and to his heirs, and the son enfeoffs the father as fully as the father enfeoffed him, by this the father hath a fee simple." *Co. Litt.* 9 b. It is sometimes more briefly expressed, **Verba relata inesse videntur.** Tindal, C. J. 4 *Man. & Gr.* 4. Heath, J. 5 *Taunt.* 337. Lord Ellenborough, C. J. 6 *M. & S.* 212.

**Verba secundum materiam subjectam intelligi nemo est qui nesciat.** There is no one who does not know that words are to be understood according to their subject matter. *Calv. Lex. Baldus. Spiegelius.*

**Verba semper accipienda sunt in mitiori sensu.** Words are always to be taken in the milder sense. 4 *Co.* 13 a. An old maxim in the law of slander, now exploded. See *Mitior sensus.*

**Verba strictæ significationis ad latam extendi possunt, si subsit ratio.** Words of a strict or narrow signification may be extended to a broad meaning, if there be ground in reason for it. A maxim of the civilians. *Calv. Lex. Spiegelius. Prateus.*

**Verba sunt indices animi.** Words are the indices or indicators of the mind or thought; words are the exponents of intention. *Latch*, 106. See *Index animi sermo.*

**VERBA CANCELLARIÆ.** L. Lat. Words of the chancery. The technical style of writs framed in the office of chancery. *Fleta*, lib. 4, c. 10, § 3.

**VERBA PRECARIA.** Lat. In the civil law. Precatory words; words of prayer or entreaty; words of trust, or used to create a trust, (*verba fidei-commissaria.*) Such as *peto*, (I beg;) *rogo*, (I ask;) *volo*, (I will;) *mando*, (I commend.) Also *deprecor*, (I entreat;) *cupio*, (I desire;) *injungo*, (I enjoin;) *desidero*, (I desire.) *Calv. Lex.* The most common words of trust were *peto*, *rogo*, *volo*, *mando*, *fidei tuæ committo.* *Inst.* 2. 24. 3.

**VERBAL CONTRACTS.** In the civil law. Contracts in which, besides the consent of the parties, a solemn form of words was required to perfect the obligation. *Hallifax, Anal.* b. 2, c. 16, num. 1. They were chiefly two; *stipulation* and *fidejussio.* *Id. ibid.* See *Inst.* 3. 16, *De verborum obligationibus.*

**VERBERA.** Lat. In old English law. Blows; beatings. *Fleta*, lib. 2, c. 53, § 1.

**VERBERARE.** Lat. In the civil law. To beat, so as to cause pain, (*cum dolore cadere.*) *Calv. Lex.* Distinguished from *pulsare*, (q. v.)

**VERBUM.** Lat. [from *verum*, true.] A word; an expression, or saying; a clause. *Calv. Lex.* *Verborum ordo*; the order of words; the orderly arrangement of words in writs. *Fleta*, lib. 4, c. 10, § 3.

**VERD.** [from Lat. *viridis*, green.] In forest law. The privilege of cutting green wood within a forest for fuel. *Spelman.* Called, also, *greenhew*, (q. v.)

The right of pasturing animals in the forest, otherwise called *herbage.* *Id.* See *Skene de Verb. Signif.*

**VERDEROR.** [L. Lat. *viridarius*; Fr. *verdeur*, from *verd*, or *vert*, q. v.] In forest law. An officer of the forest, sworn to maintain and keep the assises of the forest, and to view, receive and enrol the attachments and presentments of all manner of trespasses of vert and venison in the forest.

*Manwood*, part 1, p. 332. His office is properly to look to the *verit*, and see it well maintained. *Crompt. Jur.* 165. *Cowell*. The verderors sit in the courts of attachments and swein-mote. 3 *Bl. Com.* 71, 72.

VERDICT. [Lat. *verdictum*, from *vere*, truly, and *dictum*, said; or *veritas*, truth, and *dictum*, a saying; L. Fr. *verdit*, *verdist*.] In practice. Literally, a saying or declaration of the truth, (*veritatis dictum*.) The opinion declared by a jury as to the truth of matters of fact submitted to them for trial. The determination of a jury upon the matters of fact in issue in a cause, after hearing the case, the evidence, and the charge of the court. The finding of a jury in favor of one or the other party to an action at law, with such damages (in case of a finding for the plaintiff,) as they consider him entitled to. See 3 *Bl. Com.* 375—378.

*Cowell* defines a verdict to be “the answer of a jury made upon any cause, civil or criminal, committed by the court to their examination.” This is literally true of the verdict in criminal cases, which is in terms of exact response to a question; the question submitted to the jury being in effect, “Is the party accused guilty or not guilty?” the answer or verdict,—“guilty,” or “not guilty.” In civil cases, a verdict, though substantially an answer, also, is in its form a report, or, in technical language, a “finding;” its language being,—“We find for the plaintiff (so much) damages,” or “We find for the defendant.” See *Finding*.

\* \* The derivation and component elements of this word may be very satisfactorily illustrated by a reference to the practice in trials by jury, as laid down in the oldest books. The oath of a juror, on the trial of assises, is given by Bracton in the following terms: *Hoc auditis justitiarum, quod VERITATEM DICAM de assisa ista, &c. et pro nihilo omittam quin VERITATEM DICAM, sic me Deus adjuvet, et hæc sancta*. Hear this, ye justices, that I will say the truth of this assise, &c. and for nothing will I omit to say the truth. So help me God, and these holy [gospels.] *Bract. fol. 185*. See *Fleta*, lib. 4, c. 9, § 1. The words of the oath in the parallel passage of Britton are as follows: *Ceo oyes vous justices, que jeo VERITE DIRRAY de ceste assise, &c. et pur rienz ne lerray que jeo VERITE DIRRAY, si Dieu moy eyde et les seyntz*. *Britt. c. 52*. The oath of a juror, corresponding to the modern grand juror, is given by Bracton in the fol-

lowing words: *Hoc audite justitiarum, quod ego VERITATEM DICAM de hoc quod à me interrogabitis ex parte domini Regis, et fideliter faciam id quod mihi præcipietis ex parte domini Regis, et pro aliquo non omittam quin ita faciam pro posse meo, sic me Deus adjuvet et hæc sancta Dei evangelia*. Hear this, ye justices, that I will say the truth of that which ye shall ask of me on behalf of the lord the king, and I will faithfully do that which ye shall give in charge to me in behalf of the lord the king, and for any thing will I not omit so doing, as far as I am able. So help me God, and these holy gospels of God. *Bract. fol. 116*. The emphatic words of these oaths,—*veritatem dicam*,—*verite dirray*, clearly show the composition of the Latin *verdictum*, and French *verdit*, (used by the writers above quoted,) from which the English *verdict* is formed; the word, in fact, being essentially French. See *Verdit*. In stating the practice on the trials of assises, Bracton proceeds to say, that the jurors having made the oath, should retire to some private place, and there deliberate among themselves upon the matter given them in charge; and that no person should have access to, nor speech with them, until they had declared their verdict, (*donec suum dixerunt veredictum*;) nor should they themselves, by sign or word, communicate to any one what they intended to say. And he then adds: “*Contingit etiam multotiens quod juratores IN VERITATE DICENDA sunt sibi contrarii, ita quod in unam declinare non possunt sententiam*,” it happens also very frequently that the jurors in saying the truth, [this is the literal meaning,—in modern phraseology, “in declaring their verdict,”] are of different minds, so that they cannot settle into one opinion. *Bract. fol. 185 b*. See *Fleta*, lib. 5, c. 12, § 2. Truth, then, was, at this early period of practice, of the essence of a verdict, in the grammatical sense of the term. The juror’s oath was “to say the truth;”—his verdict, “the saying of the truth.” The modern expression “a true verdict” would have then been a pleonasm; a false verdict would have been an absurdity in terms. Hence, where the finding of a jury is mentioned by Bracton, as subject to be termed true or false, the simple word *dictum* is constantly used. If true, it was termed *verum dictum*, or verdict proper; if false, *falsum dictum*, a false saying. *Bract. fol. 186*. See *Fleta*, lib. 4, c. 17, § 9. The jurors were said, *verita-*

*tem dicere*, to say the truth, and *mendacium dicere*, to say a falsehood, according to the case. *Bract.* fol. 185 b. *Veredictum*, in other words, was never applied to a false finding; a false verdict was no verdict at all. The great rule, in fine, applied by Bracton to a juror's oath was: *Veritas habenda est in iuratore, justitia et iudicium in iudice.* *Id.* 186 b.

*Dictum*, it may be further observed, is frequently used by the writer last named, as the equivalent of *veredictum*. *Cum autem, post sacramentum suum, dixerint veredictum suum, sive pro una parte sive pro alia, secundum eorum dictum proferetur iudicium.* *Bract.* fol. 185 b. The finding of the jury was also sometimes termed *iudicium*, (a judgment;) though as a general rule, judgment was the province of the court. See *Id.* fol. 186 b.

**VERDIST**, *Vereduist*. L. Fr. In old English law. Verdict. *Et solonc le verdist du pays sur ceo charge, soient juges*; and according to the verdict of the country upon this charge, they shall be judged. *Britt.* c. 22. *Et solonc le verdist, se face le jugement*; and according to the verdict, shall the judgment be. *Id.* c. 68. The more common form of this word was *verdit*, (q. v.)

**VERDIT**. L. Fr. [from *ver*, true, and *dit*, a saying.] In old English law. Verdict; a declaration by a jury of the truth of a matter in issue, submitted to them for trial. *Come ilz serrount de un accord, tauntost voysent à la barre devant les justices, à doner lour verdit; et solonc lour verdit soit jugement rendu pour un des parties*; as soon as they [the jurors] shall be of one accord, they shall go to the bar, before the justices, to give their verdict, and according to their verdict shall judgment be rendered for one of the parties. *Britt.* c. 53. The English "verdict" seems to be immediately derived from this word.

**VEREBOT**. Sax. In old records. A packet boat, or transport vessel. *Cowell.*

**VEREDĪ**. Lat. In the civil and old European law. Public post horses. *Cod.* 12. 51. 4, 7, 12, 13, 15. *Calv. Lex.* See *Paraveredus*.

**VEREDICTUM**. L. Lat. [from *verè*, truly, or *verus*, true, and *dictum*, a saying.] In old English law. A verdict; a declaration of the truth of a matter in issue, submitted to a jury for trial. *Statim dicatur eis, quod de quolibet capitulo, separatim et per se, sufficienter, distincte, et aperte respond-*

*eant in veredicto suo*; it shall be immediately said to them, that to every article, separately and by itself, they shall make a sufficient, distinct, and open answer in their verdict. *Bract.* fol. 116. *Fleta*, lib. 4, c. 9. *Id.* lib. 5, c. 12. See *Verdict*.

**VERECTUM**. L. Lat. In old English law. Fallow-ground. *Domesday.* *Cowell.* See *Warectum*.

**VEREK**. L. Fr. Wreck. *Kelham.*

**VEREY**. L. Fr. [from Lat. *verus*.] In old English law. True. *A la verey value*; at the true value. *Britt.* c. 18. *De la verey value.* *Id.* c. 21. *Que n'est mye son verey juge*; who is not his true or proper judge. *Id.* c. 121. See *Verray*, *Verrey*.

**VERGE**. L. Fr. and Eng. In English law. A privileged space around, or immediately adjoining the king's palace or residence. See *Pax regis*. The compass of the jurisdiction of the Court of the Marshalsea or Palace Court. 3 *Bl. Com.* 76. *Et que le mareschal de nostre hostel tiegne nostre lieu dedans la verge de nostre hostel*; and that the marshal of our household hold our place within the verge of our household. *Britt.* fol. 1 b. "We see further, that the law doth so esteem the dignity of the king's settled mansion-house, as it hath laid unto it a plot of twelve miles round, which we call *the verge*, to be subject to a special and exempted jurisdiction depending upon his person and great officers. This is as a half-pace or carpet spread about the king's chair of state," &c. *Bacon's Charge* upon the Commission for the Verge; *Works*, iv. 383, 384.

**VERGE**. L. Fr. [from Lat. *virga*, q. v.] In old English law. A rod, wand or staff, used as an ensign of office. *Et puis preignent les justices les verges del viscounte, &c.—Et apres le serement fait, luy soit la verge rendue.* And then the justices shall take the staves of the sheriff, &c.—And after the oath made, the staff shall be returned to him. *Britt.* c. 2.

**VERGENS AD INOPIAM**. L. Lat. In Scotch law. Verging towards poverty; in declining circumstances. 2 *Kames' Equity*, 8.

**VERGERS**. [L. Lat. *virgatores*.] In English law. Officers who carry white wands before the justices of either bench. *Cowell.* Mentioned in *Fleta*, as officers of the king's court, who oppressed the people by demanding exorbitant fees, (*gravia feoda petentes*.) *Fleta*, lib. 2, c. 38.

**VERIFICARE**. Lat. [from *verus*, true,

and *facere*, to make.] In old pleading. To make out or prove to be true; to verify. *Fleta*, lib. 5, c. 37, § 4. See *Et hoc paratus est verificare*.

**VERIFICATION.** [Lat. *verificatio*, from *verificare*, to verify.] In pleading. Literally, a making out to be true; the proving of an assertion to be true; called, in the old books, an *averment*. An assertion of the ability of the pleader to prove the matter alleged in his plea. 6 *Man. & Gr.* 37, note (c.) A formula with which all affirmative pleadings, not concluding to the country, are required to conclude, and which is usually expressed in the following words: "And this the said plaintiff" (or defendant,) "is ready to verify." *Steph. Pl.* 433, 434.

**VERIFY.** [L. Lat. *verificare*, q. v.] In pleading. To make out to be true; to prove. See *Verification*.

**VERITAS.** Lat. [from *verus*, true.] Truth; verity. *Veritas à quocunque dicitur, à Deo est*; truth, by whomsoever it is spoken, is of God. 4 *Inst.* 153.

*Veritas nihil veretur nisi abscondi.* Truth fears nothing but to be hid. 9 *Co.* 20 b, *Case of avowry*.

*Veritas nimium altercando amittitur.* Truth is lost by excessive altercation. *Hob.* 344.

*Veritas nominis tollit errorem demonstrationis.* The truth of the name removes [the effect of] error of demonstration. *Bac. Max.* reg. 25. A well-known maxim frequently applied in construing wills. 8 *Taunt.* 313. 2 *Jones' (N. C.) Equity R.* 72. See *Præsentia corporis, tollit, &c.*

**VERITE, Veritee.** L. Fr. [from Lat. *veritas*, q. v.] Truth. *Puesse dire sa grosse veritee*; may relate the whole truth of his case. *Kelham*.

**VERRAY, Verrai, Verrey, Very.** L. Fr. [from Lat. *verus*, q. v.] In old English law. True. *A chescun verray heire*; to every true heir. *Britt.* c. 118. *Si la cause soit verrey*; if the reason be true. *Id.* c. 28. *Encontre les verreys heires.* *Id.* c. 43. *A la very value.* *Id.* c. 53. *Soun verrai tenant*; his immediate tenant. *Yearb. H.* 2 Edw. II. 27.

**VERS.** L. Fr. [from L. Lat. *versus*, q. v.] In old practice. Against. *Exceptions vers le juge, ou vers le pleyntyfe, vers qui il purra dire*; exceptions against the judge or against the plaintiff, against whom he may say. *Britt.* c. 57. The same with *envers*, (q. v.)

**VERSARI.** Lat. In the civil law. To be employed; to be exercised; to be continually engaged; to be conversant. *Versari male in tutelâ*; to misconduct one's self in a guardianship. *Calv. Lex. Versari in lucro*; to be in gain, or a gainer. *Id.*

**VERSUS.** L. Lat. In practice. Against; an abbreviation of the Lat. *adversus*. Used by Bracton indifferently with *contra*, (q. v.) *Actio competit contra eum*; an action lies against him. *Bract.* fol. 103 b. *Actio datur versus eum*; an action is given against him. *Id. ibid.* Retained in modern practice, in the titles of causes, but commonly in its contracted forms, *vs*, and *v.* The Fr. form *vers* frequently occurs in Britton. See *Vers, Vs.*

**VERT.** [from Fr. *verd*, from Lat. *viridis*, green.] In forest law. Every thing that grows and bears green leaf within the forest, that may cover a deer. *Manwood*, part 2, fol. 6, 33. Otherwise called *green-hue*, and by Blackstone *green-swerd*. "Vert and venison" is an expression used to denote the wood of a forest, and the animals or deer in it. 4 *Inst.* 289. 3 *Bl. Com.* 71. 1 *Crabb's Real Prop.* 486. *Over-vert* is high wood, (*haut bois*;) *nether-vert* is underwood, (*south bois*, or *sub-bois*.) *Cowell*.

**VERUS.** In old English law. True. *Verus dominus*; the true lord. *Bract.* fol. 210. *Meum verum et legitimum, ordino, facio et constituo procuratorem*; I ordain, make and constitute my true and lawful attorney. *Reg. Orig.* 306. From this word were formed the L. Fr. *ver*, *verray*, *verrey*, *vereye*, and *very*; the last being also used as an English word. See *Very*.

**VERY.** L. Fr. and Eng. [from Lat. *verus*, q. v.] True; actual; immediate. "Very lord and very tenant" (*verus dominus et verus tenens*;) is used in the old books to denote those that were immediate lord and tenant one to the other. *Bro. Abr.* Hariot. 23. *O. N. B.* 42. A man was not "very tenant," until he had attorned to the lord by some service. *Cowell.* *A la very value*; to the true value. *Britt.* c. 53. *Le very cas fuit*; the case in fact was. *Dyer*, 62, (Fr. ed.)

**VESQUE, Veske.** L. Fr. A bishop. *Kelham*.

**VESQUIR.** L. Fr. To live. *Si il vesquist*; if he was alive. *Kelham*.

**VESSEL** is used, in maritime law, as a synonyme of *ship*, and in the same general sense. See 3 *Kent's Com.* 129—363. As

between the terms themselves, *vessel* seems to be the one of larger import, as it undoubtedly is in popular acceptation. "To the term *vessel* generally," observes M. Jacobsen, "we affix but a very indefinite idea; originating in the infancy of commerce, from L. 1. § 6, *D. de exercitoria actione*, [*Dig.* 14. 1. 1. 6.] in which all *vessels* are termed *ships*, and this want of precision still prevails in the law, and among its professors." *Jacobsen's Sea Laws*, citing *Stypmann Jus Marit.* pars. iii. cap. 148. *Straccha*, pars. i—2. *Casaregis* disc. i—29. By the English statute of 5 & 6 Will. IV. "ship" is declared to comprehend every description of *vessel navigating on the sea*, and "steam vessels" employed in carrying passengers or goods are *trading ships*. Under the term *vessel*, it was said by Mr. J. Patteson, in a late English case, a *boat* would, in common parlance, be included. 4 *Carr. & P.* 559. See *Id.* 569.

*Vessel* occurs as a L. Fr. word in the old books. *Des neyes hors de meer en nostre royalme cheys hors de vessel, volons ausi que le vessel, et, &c.* *Britt.* c. 1.

VEST. [from Fr. *vester*, Lat. *vestire*, to clothe.] To clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff. *Spelman*, voc. *Vestire*. See *Devest*, *Invest*.

To pass to a person; to become fixed in a person; to give an immediate right of present enjoyment; to give a present fixed right of future enjoyment; to give a legal or equitable seisin.\* 4 *Kent's Com.* 202. A statute or conveyance is said "to vest an estate in a person;" an estate is said "to vest or be vested in a person." *Id.* 238, 245. In the old books, a person is said to be "vested of" an estate. "Any interest whereof the king was vested." *Bacon's Works*, iv. 234.

VESTED LEGACY. A legacy, the right to which vests permanently in the legatee, though the legacy is not payable until a future time.\* A legacy to one, to be paid when he attains the age of twenty-one years, is a vested legacy; an interest which commences *in presenti*, although it be *solvendum in futuro*; and if the legatee dies before that age, his representative shall receive it out of the testator's personal estate, at the same time that it would have become payable, in case the legatee had lived. 2 *Bl. Com.* 513.

VESTED REMAINDER. A fixed in-

terest [in lands or tenements] to take effect in possession, after a particular estate is spent. 4 *Kent's Com.* 202.—Vested remainders (or remainders *executed*, whereby a present interest passes to the party, though to be enjoyed *in futuro*;) are where the estate is invariably fixed, to remain to a determinate person, after the particular estate is spent. As if A. be tenant for twenty years, remainder to B. in fee; here B.'s is a vested remainder, which nothing can defeat or set aside. 2 *Bl. Com.* 168, 169.

In New-York, a vested remainder has been defined by statute, "when there is a person in being who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate." 1 *Rev. St.* [723,] 718, § 13.

VESTER, *Vestre*. L. Fr. In old English law. To vest; to enure. *Kelham*.

*Vestue*; clothed. *Contract vestue*; a clothed contract. The opposite of *nue*; naked or nude. *Britt.* c. 28. *Obligation doit estre vestue de v. maneres de garnementz*; obligation ought to be clothed in five kinds of garments. *Id. ibid.*

VESTIGIUM. L. Lat. In the law of evidence. A trace, or track; a mark left by a physical object. *Vestigia caretæ*; the tracks of a cart. *Fleta*, lib. 1, c. 25, § 6.

VESTIMENTUM. L. Lat. [from *vestire*, to clothe.] In old English law. Clothing. A figurative expression denoting the character, quality or circumstance of *right*, as opposed to the negation or destitution of right, which was compared to a state of *nakedness*. *Possessio est nuda, donec ex tempore et seysina pacifica acquiratur vestimentum*; the possession is naked, until a clothing [i. e. of right] be acquired by time and peaceable seisin. *Bract.* fol. 160.

In feudal law. Investiture; seisin. Lord Mansfield, C. J. 1 *Burr.* 109, quoting *Bract.* fol. 160.

In old English law. The technical form of a contract, requisite to give it effect. *Fleta*, lib. 2, c. 56, §§ 3, 4.

VESTIRE. L. Lat. In feudal law. To deliver full possession of land or of an estate, (*plenam possessionem terræ vel prædii tradere*;) to give seisin; (*seisinam dare*;) to enfeoff or invest, (*infeodare*.) *Spelman*. To clothe with possession.

In old English law. To clothe a contract in the proper form to give it validity.

Such a contract was said to be *vestitum*, (clothed) as distinguished from *nudum*, (naked.) *Fleta*, lib. 2, c. 56, § 3.

VESTITURA. L. Lat. [from *vestire*, q. v.] In feudal law. Investiture; delivery of possession. *Spelman*, voc. *Vestire*.

VESTURA. L. Lat. [from *vestire*, to clothe.] In feudal and old English law. Literally, a garment. A possession, or admittance to a possession or seisin. *Cowell*.

In old English law. A crop of grass or corn, [grain.] *Cowell*.

Vest, vesture; livery, delivery. An allowance of some set portion of the products of the earth, as corn, grass, wood, &c. for part of the salary or wages to some officer, servant or laborer, for their livery or vest. *Id.*

VESTURA TERRÆ. L. Lat. In old English law. The vesture of the land, that is, the corn, grass, underwood, sweepage and the like. *Co. Litt.* 4 b. See *Keilw.* 48. 4 *Leon.* 43. *Palm.* 174. *Owen*, 37.

VESTURE. In old English law. Profit of land. "How much the vesture of an acre is worth." *Extent. Maner.* 4 *Edw.* I. *Cowell*.

VETERA STATUTA. Lat. Ancient statutes. The English statutes from Magna Charta to the end of the reign of Edward II. are so called; those from the beginning of the reign of Edward III. being contradistinguished by the appellation of *Nova statuta*. 2 *Reeves' Hist. Eng. Law*, 85.

VETITUM NAMIUM. L. Lat. [from *vetitum*, prohibited, and *namium*, taking; L. Fr. *vee de name*, q. v.] In old English law. A refused or prohibited taking or distress; a refusal to re-deliver a distress; a prohibition of its being taken again by the owner;\* the detention of a distress, (*detentio namii*.) *Bract.* fol. 155 b. Lord Coke explains this to be, when the bailiff of a lord distrained beasts or goods, and the lord forbid the bailiff to deliver them when the sheriff came to replevy them, and to that end directed him to drive them to places unknown, or to take such a course as they should not be replevied; or where, without any word, they were elained, or so handled by a forbidden course as they could not be replevied, for then they were forbidden in law to be replevied. 2 *Inst.* 140. *Vetitum namium* has sometimes been considered as the Latin form of *wi-*

*thernam*. 3 *Bl. Com.* 148. But Lord Coke has clearly shown it to have been a different act or proceeding. 3 *Inst. ub. sup.* And Bracton expressly calls it *detentio namii pro districtione facienda*; the detention of a thing taken by way of distress. *Bract.* fol. 155 b. And see *Fleta*, lib. 2, c. 47, §§ 32, 33. See *Vee de name*.

VETO. Lat. I forbid. The word by which the Roman tribunes expressed their negative against the passage of a law or other proceeding, which was also called interceding, (*intercedere*.) *Adam's Rom. Ant.* 13, 145, 146.

In modern times, this word has been used to designate the power enjoyed by the executive department of a government, of negating bills which have been passed by the legislature. *Brande.* 1 *Kent's Com.* 239—241.

VETUS JUS. Lat. The old law; old law. A term used in the civil law, sometimes to designate the law of the Twelve Tables, and sometimes merely a law which was in force previous to the passage of a subsequent law. *Calv. Lex.*

A law, principle or doctrine of long standing. *Cod.* 9. 2. 6.

VETUSTAS. Lat. [from *vetus*, old.] In the civil law. Antiquity; ancient or former law or practice; the same with *antiquitas*, (q. v.) *Inst.* 3. 1. 15.

Time out of memory, (*tempus quod memoriam hominum excedit*.) *Calv. Lex.*

VEUTA TERRÆ. L. Lat. [from L. Fr. *veu de terre*.] View of land. Mentioned by Skene as a French term, corresponding with the Lat. *visus terræ*. *Skene ad. lib.* 1. *Reg. Maj.* c. 9. *Spelman*. See *Visus*, *View*.

VEXATA QUÆSTIO. L. Lat. A vexed question; a question often agitated or discussed, but not determined or settled; a question or point which has been differently determined, and so left doubtful. 7 *Co.* 45 b, *Kenn's case*. Lord Mansfield, C. J. 3 *Burr.* 1547. Lord Ellenborough, C. J. 9 *East*, 215. *Vexata et spinosa quæstio*; a vexed and thorny question. *Brownl.* (part 2,) 318.

VEY. L. Fr. Way. *Haut vey*; highway. *Kelham*.

VEYER. L. Fr. To see; to view. *Veyer est*; it is to be seen. *Kelham*. *Veyet*; sees. *Id.*

VEYLE. L. Fr. Elder. *Kelham*.

VEYLLE. L. Fr. A town. *Kelham*.

VEYN. L. Fr. [from Lat. *vanus*.] In

old English law. Void. *Et si rien soit fait devant ceux substitutz, volons que soit veyn, et de nule force*; and if any thing be done before those substitutes, we will that it be void, and of no force. *Britt.* fol. 3.

VEYSIN. L. Fr. [from Lat. *vicinus*.] In old English law. A neighbor. *Les veysins del hundred.* *Britt.* c. 62.

VI AUT CLAM. Lat. In the civil law. By force, or covertly. *Dig.* 43. 24. A thing was said to be done *vi*, when it was done contrary to a prohibition on the part of a possessor. *Vi factum videri, si quis contra quam prohiberetur, fecerit.* *Id.* 43. 24. 1. 5. *Vi factum id videtur esse qua de re quis, quum prohiberetur, fecit.* *Dig.* 50. 17. 73. 2. A thing was said to be done *clam*, which was done by a person having, or anticipating to have a controversy with another. *Clam* [*factum id videtur esse,*] *quod quisque, quum controversiam haberet habiturumve se putaret, fecit.* *Id.* *ibid.*

VI BONORUM RAPTORUM. Lat. In the civil law. Of goods taken away by force. The name of an action given by the prætor as a remedy for the violent taking of another's property. *Inst.* 4. 2. *Dig.* 47. 8. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 2.

VI ET ARMIS. L. Lat. [L. Fr. *ovesque force et armes*.] In old practice and pleading. With force and arms. Emphatic words in writs and declarations of trespass, in which an act of force and violence was charged. *Rex, vice-comiti Lincoln' salutem. Si A. fecerit te securum de clamore suo prosequendo, tunc pone per vadium et salvos pleg' B. quod sit coram justitiariis nostris apud Westm. in octavis sancti Michaelis, ostensurus quare VI ET ARMIS, in ipsum A. apud N. insultum fecit, et ipsum verberavit, vulneravit et male tractavit; ita quod de vita ejus desperabatur; et alia enormia ei intulit, ad grave damnum ipsius A. et contra pacem nostram. Et habeas ibi nomina pleg' et hoc breve.* (The King to the Sheriff of Lincoln, greeting: If A. make you secure of prosecuting his claim, then put B. by gage and safe pledges, that he be before our justices at Westminster, on the octave of St. Michael, to show wherefore, *with force and arms*, he made an assault upon the said A. at N. and beat, wounded, and ill treated him, so that his life was despaired of; and other wrongs to him did, to the grievous damage of the

said A. and against our peace. And have you there the names of the pledges and this writ.) *Reg. Orig.* 93. This was the original writ in the action of trespass for an assault and battery, and its language is very closely followed in modern declarations of trespass. 2 *Chitt. Pl.* 846, 852. See *Force and arms*.

VIA. Lat. In the civil law. Way; a way; a road; a right of way. The right of walking, riding, and driving over another's land, (*jus eundi, et agendi, et ambulandi*.) *Inst.* 2. 3, pr. A species of rural servitude, which included *iter* (a foot-path,) and *actus*, (a drift-way.) *Id.* *ibid.* *Dig.* 8. 3. 1, pr. *Id.* 8. 3. 7. *Id.* 8. 3. 23, pr.

In old English law. A way; a public road; a foot, horse, and cart way. *Co. Litt.* 56 a. See *Fleta*, lib. 4, c. 27, §§ 1, 2.

VIA PUBLICA. Lat. In the civil law. A public way or road, the land itself belonging to the public. *Dig.* 43. 8. 2. 21.

VIA REGIA. L. Lat. In English law. The king's highway for all men. *Co. Litt.* 56 a. *Stat. Marlbr.* c. 15. The highway or common road; called *the king's highway*, because authorized by him and under his protection. *Cowell*. Called, also, *via regalis*. *Fleta*, lib. 1, c. 24, § 8.

Via trita via tuta. The beaten path is the safe path. The usual course of practice ought to be pursued. 3 *Bing. N. C.* 45. Courts of law will not sanction a speculative novelty, without the warrant of any principle, precedent, or authority. *Broom's Max.* 58. Otherwise expressed, *Via trita est tutissima*. The beaten way is the safest. 10 *Co.* 142 a. 4 *M. & S.* 168.

VIAGIUM, Viaggiu. L. Lat. In old English and maritime law. Voyage; a voyage. *In nostri contemptum et deceptionem, ac viagii nostri prædicti, quantum in ipso fuit, retardationem manifestam*; in contempt and fraud of us, and to the manifest retarding of our said voyage as far as in him lay. *Reg. Orig.* 24 b. *Emerig. Tr. des Ass.* ch. 13, sect. 5, § 1. See *Voyage*.

VIAGE. L. Fr. A voyage; an expedition. *Kelham*.

VIANDER. In old English law. A returning officer. 7 *Mod.* 13.

VIATOR. Lat. [from *via*, a way or road.] In the Roman law. A summoner or apparitor; an officer who attended on the tribunes and ædiles. So called, be-

cause they were often on the road, (*quod sæpe in via essent*), it being anciently their office to summon the senators from the country where they resided. *Adam's Rom. Ant.* 192. *Calv. Lex.*

A traveller; a foot passenger. *Id.*

VIC'. A common abbreviation of *vicecomes* in old writs.

VICAR. [L. Lat. *vicarius*, from *vicis*, place or stead.] One who acts in the place of another, (*qui vicem alterius gerit*;) one who is deputed or authorized to perform the functions of another; a substitute; a deputy. See *Vicarius*.

In English ecclesiastical law. The incumbent of an appropriated benefice. The distinction of a *parson* and *vicar* is this: the parson has, for the most part, the whole right to all the ecclesiastical dues in his parish; but a *vicar* has generally an appropriator over him, entitled to the best part of the profits, to whom he is, in effect, perpetual curate, with a standing salary. 1 *Bl. Com.* 388. *Vicar* was a title not known till the reign of Henry III. 1 *Chitt. Bl. Com.* 387, note. See 1 *H. Bl.* 421.

VICARAGE. In English ecclesiastical law. The living or benefice of a vicar, as a parsonage is of a parson. See 1 *Bl. Com.* 387, 388. 1 *Wooddes. Lect.* 188—193.

VICARIUS. Lat. [from *vicis*, place or stead.] A deputy; a substitute; one who acts in the place of another, (*qui vice fungitur alterius*.) *Vicarius non habet vicarium*. A deputy has not [cannot have] a deputy. A delegated power cannot be again delegated. *Broom's Max.* 384, [665.] See *Delegata potestas*, &c.

In the civil law. The slave of a slave. *Dig.* 33. 8. 6. 3. The expression *vicarius vicarii* is used in the same passage. See *Tayl. Civ. Law*, 421, 422.

In old European law. The deputy of a count; a viscount. *Esprit des Lois*, liv. 30, c. 18. *Nullus comes, vicarius, villicus, &c. seu quilibet alius rem ab alio possessam sine iudicio usurpet*; no count, viscount, steward, &c. or any one else, shall take a thing out of the possession of another without judicial process. *LL. Wisegothor.* lib. 8, tit. 2, l. 5. See *Id.* lib. 9, tit. 2, l. 8. *Id.* lib. 12, tit. 1, l. 2. *Capitul.* lib. 3, c. 11. *LL. Longob.* lib. 2, tit. 47, l. 1. *Spelman.*

VICE. Fr. and L. Fr. [from Lat. *vitium*.] In old English law. Fault; defect. *Si le brefe soit abatu pur erreur, ou pour autre vice ou defeaute*; if the writ be abated for

error, or for other fault or defect. *Britt.* c. 46. *Et ausi par vice de escripture, [est le brefe abatable]; et ausi par vice del parchemyn, ou par vice de rasure*; and also by defect of the writing, [is the writ abatable,] and also by defect of the parchment, or by the defect of rasure. *Id.* c. 48.

In French law. A defect or imperfection in a thing sold. *Civil Code of Louis.* Art. 2496, *et seq.*

VICE. Lat. [ablat. of *vicis*, place.] In the place or stead, (*loco*.) *Vice mea*; in my place. Used both in Latin and English, in the composition of words denoting a delegated or deputed authority. See *infra*. See *Vicis*.

VICE-ADMIRALTY COURTS. In English law. Courts established in the Queen's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize. 3 *Steph. Com.* 435. 3 *Bl. Com.* 69.

VICE-CHANCELLOR. [L. Lat. *vicecancellarius*.] An equity judge who acts as assistant to the chancellor, holding a separate court, from which an appeal lies to the chancellor. There are three vice-chancellors who hold courts in England,—the Vice-Chancellor of England, and two others. 3 *Steph. Com.* 418.

VICE-COMES, (or VICECOMES.) L. Lat. [L. Fr. *viscount*.] In old English law and practice. Sheriff; the sheriff of a county. *Mag. Cart.* 9 Hen. III. c. 17. *Id. Johan.* c. 24. *Reg. Orig.* passim. *Spelman*. So called, as being the deputy of the earl, or comes, to whom the custody of the shire is said to have been committed at the first division of England into counties. But the earls, in process of time, by reason of their high employments and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden; reserving to themselves the honor, but the labor was laid on the sheriff. So that now the sheriff does all the king's business in the county, and though he be still called *vicecomes*, yet he is entirely independent of, and not subject to the earl; the king by his letters patent committing *custodiam comitatus* to the sheriff, and him alone. 1 *Bl. Com.* 339. 7 *Co.* 33, and pref. 9 *Co.* 49. *Dalton's Sheriff*, 2. *Sewell's Sheriff*, 3, 4. *Fortescue de L. L. Angliæ*, c. 24, note.

*Viscount*, the corresponding French term, has become, in England, like *earl*, exclu-

sively a title of nobility. In the Royal Court of the Island of Jersey, however, the sheriff is still called *viscount*. 7 *Ad. & Ell.* (N. S.) 989, 1002. See *Viscount*.

**VICECOMES NON MISIT BREVE.** L. Lat. The sheriff hath not sent the writ. The form of continuance on the record after issue and before trial. 7 *Mod.* 349. 11 *Id.* 231. See *Continuance*.

**VICE-COMITISSA.** L. Lat. In old English law. A viscountess. *Spelman*. *Vice-comitissa dotissa*; viscountess dowager. *Com.* 185.

**VICE-CONSUL.** L. Lat. In old English law. The deputy or substitute of an earl, (*comes*), who was anciently called *consul*; answering to the more modern *vicecomes*. See *Consul*.

**VICE-DOMINUS.** L. Lat. In Saxon law. The governor of a province; (*præfectus provincie*.) *Ingulph.* p. 870, l. 46. Alfred is said to have divided this office into two, the *judex*, or justice, and *vicecomes*, or sheriff. *Id. ibid.* *Spelman*. Blackstone, quoting Camden, makes the title synonymous with *vidame* and *valvasor*. 1 *Bl. Com.* 403. In Cowell, it is translated *viscount*, or *sheriff*.

In canon law. A bishop's deputy. *Calv. Lex.* A *vidame*. (?) See *Vidame*.

**VICE-GERENT.** In old English law. A deputy or lieutenant, (*locum tenens*.) *Stat. 31 Hen. VIII. c. 10.* *Cowell*.

**VICE-JUDEX.** L. Lat. In old Lombardic law. A deputy judge. *LL. Longob.* lib. 2, tit. 30, l. 2. *Spelman*.

**VICINAGE.** L. Fr. and Eng. [from Lat. *vicinus*, near.] Neighborhood; near dwelling; vicinity. 2 *Bl. Com.* 33. *Cowell*.

**VICINETUM.** L. Lat. [from Lat. *vicinus*, near, adjacent.] In old English law. A neighborhood, or vicinage; visne or venue.\* *Magna Charta*, c. 14. A place which neighbors inhabited, (*locus quem vicini habitant*.) *Spelman*. Anciently understood of the same vill or the parts adjacent, or of the same hundred; in later law, of the same county. *Id.* Answering to the Lat. *vicinia* and *vicinium*. *Visinetum*, *visinetus*, *visnetum*, are other forms of this word, which occur in the old books. In old Scotch law, it is written *voisinetum*, (from Fr. *voisin*.)

**VICINIA.** Lat. [from *vicinus*, near.] In the civil law. Nearness of dwelling; neighborhood; a neighborhood; a neighboring place. Distinguished from *confi-*

*nium*, as being applied to urban estates. *Calv. Lex.*

**VICINITAS.** Lat. [from *vicinus*, near.] Neighborhood; vicinity.

In old Scotch law. The verdict of an assise or jury. *Quon. Attach.* c. 83. *Skene in loc.* *Spelman*.

**VICINUS.** Lat. In the civil law. Near; adjacent; neighboring. Applied more particularly to urban estates, or those which were separated by a common wall; *confinis* being the term applied to adjacent rural estates. *Calv. Lex.* Places were said to be neighboring (*vicini*), when the voice of a person shouting could be heard from one to the other. *Id.*

In old English law. A neighbor. *Vicini viciniora facta præsumuntur scire*. Neighbors are presumed to know the acts that are done in their more immediate neighborhood. 4 *Inst.* 173.

**VICIOUS.** L. Fr. [from *vice*, q. v.] Faulty; defective; bad. *Respondre à cel escript* vicious; to answer to such faulty writing. *Britt.* c. 28. *Soit le brefe troye* vicious; the writ be found defective. *Id.* c. 46. *Est le brefe abatable et vicious.* *Id.* c. 48. *Le brefe purra estre vicious en plusieurs maneres*; the writ may be faulty in many ways. *Id. ibid.*

**VICIS.** Lat. Change; turn. *Pro hac vice*; for this turn.

Place; stead; office; duty. See *Vice*.

**VICONT.** L. Fr. Sheriff. *Litt.* sect. 101. *Dyer*, (Fr. ed.) *passim*.

**VICONTIEL.** L. Fr. and Eng. [from *vicont* or *vicount*, sheriff.] In English practice. Belonging to the sheriff. *Vicontiel* writs are such as were triable in the county or sheriff's court. *O. N. B.* 109. *Cowell*. Or they were such as were directed to the sheriff, and not to be returned to any superior court, till finally executed by him. 3 *Bl. Com.* 238.

**VICONTIELS, Vicountiels.** [L. Lat. *vicecomitilia*.] In old English law. Farms for which the sheriff paid a rent to the king, and made what profit he could of them. *Stat. 33 & 34 Hen. VIII. c. 16.* *Spelman*. *Cowell*. Called, also, *vicontiel rents*. *Stat. 22 Car. II. c. 6.* *Cowell*. Now placed under the management of the Commissioners of Woods and Forests. *Stat. 3 & 4 Will. IV. c. 99, §§ 12, 13.*

**VICOUNT, Vicounte.** L. Fr. An old form of *viscount*, (q. v.) *Stat. Westm.* 1, c. 15.

**VICTUS.** Lat. In the civil law. Sus-

tenance; support; the means of living. The word included every thing necessary to the support of human life, (*quæ ad vivendum homini necessaria sunt.*) *Dig.* 50. 16. 43.

**VICUS.** Lat. In old English law. A street in a town; a passage between two rows of houses, (*in oppido via est, domuum seriem complexa.*) *Fortescue de L. L. Angl.* c. 24, note. *Vici et venelli*; streets and lanes. *Reg. Orig.* 267.

A village; a neighborhood of houses out of a town. *Vicus ex domibus constat extra oppida.* *Fortesc. de L. L. Angl. ub. sup.*

**VIDAME.** In French feudal law. Originally, an officer who represented the bishop, as the viscount did the count. In process of time, these dignitaries erected their offices into fiefs, and became feudal nobles, such as the *vidame* of Chartres, Rheims, &c.; continuing to take their titles from the seat of the bishop whom they represented, although the lands held by virtue of their fiefs might be situated elsewhere. *Brande.*

A chief in the neighborhood of a church or abbey who acted as its protector. *Steph. Lect.* 236.

Blackstone, quoting Camden, makes *vidame* to be a title in old English law, synonymous with that of *valvasor*. 1 *Bl. Com.* 403.

**Videbis ea sæpe committi, quæ sæpe vindicantur.** You will see those offences often committed, which are often punished. 3 *Inst. Epilog.*

**VIDEL'T.** A contraction of *videlicet*. 1 *Inst. Cler.* 13.

**VIDELICET.** Lat. [from *videre*, to see, and *licet*, it is permitted.] To wit; that is to say; namely. Literally, it may be seen; you may see; it is to be seen. A term compounded similarly with *scilicet*, (q. v.) and of similar import, being used as prefatory to a particular statement of something that was just before mentioned in general terms.

Lord Hobart says of a *videlicet*, in its application to conveyancing, that it "is neither a direct several clause, nor a direct entire clause, but it is *intermedia*." *Hob.* 172. And again, "it is clear that it is not a substantive clause of itself; and, therefore, you can neither begin a sentence with it, nor make a sentence of it, by itself; but it is, (as I may say,) *clausula ancillaris*, a kind of handmaid to an-

other clause, and to deliver her mind, [i. e. the meaning of the other clause,] not her own." *Id.*

In modern pleading, a *videlicet* is used where a party alleges a fact, (such as time, quantity, or value,) which he does not wish to be held to prove strictly. The terms actually used for this purpose are the English "to wit," or "that is to say," immediately previous to the allegation, which is called "laying the time, &c. under a *videlicet*." *Steph. Pl.* 293.

**VIDENDUM EST.** Lat. It is to be seen; it is to be considered. A common expression in Bracton.

**VIDERE.** Lat. In old practice. To view. *Fleta*, lib. 4, c. 6, § 4.

**VIDETUR.** Lat. It is seen; it appears; it seems; it is considered; it is supposed. *Qui tacet consentire videtur.* He who is silent is considered to consent.

**VIDIMUS.** L. Lat. (We have seen.) In old English practice. A species of exemplification of the enrolment of charters or other instruments. So called, from its initial words: *Vidimus quoddam scriptum*, &c. (We have seen a certain writing.) An *innotescimus* or *vidimus* are all one, and are always of a charter of feoffment, or some other instrument which is not of record. 5 *Co.* 54 a, *Page's case. Co. Litt.* 225 b. See *Barringt. Obs. Stat.* 5, note [h.]

**VIDUA.** Lat. In civil and old English law. Widow; a widow. *Dig.* 50. 16. 242. 3. *Reg. Orig.* 175 b. *Magna Charta*, c. 7. According to Javolenus in the Digests, this word in the Roman law was applied to women who had not been married. *Dig. ub. sup.*

**VIDUA REGIS.** L. Lat. In old English law. A king's widow. The widow of a tenant *in capite*. So called, because she was not allowed to marry a second time without the king's permission; obtaining her dower also from the assignment of the king, and having the king for her patron and defender. *Spelman.*

**VIDUITAS.** Lat. [from *vidua*, widow.] In old English law. Widowhood; viduity. *Burr. Sett. Cas.* 794. "Chaste viduity." Lord Ellenborough, 10 *East*, 520.

**VIE.** L. Fr. [from Lat. *vita*.] Life. See *Cestui que vie*, *En pleyne vie*, *Pour autre vie*.

**VIEF, Vif.** L. Fr. [from Lat. *vivus*.] Living; alive; live. *Vief naam*; a live distress. *Kelham.*

VIEL. L. Fr. Old; elder. *Vieles, viez dettes*; old debts. *Kelham*.

VIER. L. Fr. [from Lat. *videre*.] To see. *Vient*; they see. *Kelham*.

VIERS, *Vers*. [from Lat. *versus*.] Towards. *Kelham*.

VIEW. [L. Fr. *veue*; L. Lat. *visus*.] In practice. Inspection, or examination of a place or person, in the course of an action.

In many of the old real actions, the tenant might demand a *view* of the land in question; or, if a rent was to be recovered, a *view* of the land out of which it issued. In other actions, as in assise of novel disseisin and waste, the view was had by the jury. The reason of this proceeding was, that the tenant or jury might know with certainty what the demandant sought to recover, and that the defence might be shaped accordingly. *Roscoe's Real Act*. 247. 3 *Bl. Com.* 299. *Britt.* c. 45. *Cowell*.

In some modern actions, as in trespass *quare clausum fregit*, where it appears to the court, or a judge in vacation, to be proper and necessary that the jurors who are to try the issues, should, for the better understanding of the evidence, have a *view* of the messuages, lands, or place in question, the court or a judge will grant a rule or order for such view; and a similar proceeding may be had in criminal cases. 2 *Tidd's Pr.* 795—798. 1 *Burr.* 252.

VIEW. [Lat. *prospectus*; Fr. *vue*.] Prospect; the prospect from one's house or ground, of which his neighbor is not permitted to deprive him, by erecting a new building, or any other obstruction. A species of urban servitude, derived from the civil law. 3 *Kent's Com.* 448. *Dig.* 8. 2. 3. Defined in the Civil Code of Louisiana, to be "every kind of opening which may more or less facilitate the means of looking out of a building." *Art.* 711.

VIEW OF FRANK PLEDGE. [L. Lat. *visus franci plegii*.] In old English law. The office which the sheriff in his county court, or the bailiff in his hundred, performed in looking to the king's peace, and seeing that every man were in some frank pledge, or decennary.\* *Cowell*. See *Stat.* 18 *Edw. II.* A. D. 1325. *Barringt. Obs. Stat.* 208.

The ancient name of the court leet. 4 *Bl. Com.* 275. See *Court leet, Frank pledge*.

VIEWERS. [L. Fr. *vejours*; Lat. *visores*.] In old practice. Persons appointed under writs of view, to testify the view. *Roscoe's Real Act*. 253.

Vigilantibus et non dormientibus jura subveniunt. The laws relieve or succor those who are vigilant, not those who sleep [upon their rights.] *Bract.* fol. 175 b. 2 *Inst.* 690. *Wingate's Max.* 672, max. 174. More briefly, *Vigilantibus jura subveniunt*. The laws assist the vigilant. 1 *P. Wms.* 297. A party who is entitled to a remedy at law, must be active and vigilant in its prosecution. If he neglects for a long and unreasonable time to ask the assistance of the law, to recover a right, it will be refused him, both as a punishment of his neglect, and on the principle of restraining litigation by limiting actions to certain periods. See 3 *Bl. Com.* 188. *Broom's Max.* 391, [692,] *et seq.* Called, by Sir William Scott, "a universal maxim." 5 *Rob. Adm. R.* 105. Bracton introduces this maxim in the following passage, which is probably the earliest instance of its application in the English books: *Sciendum quod statim et sine mora, [fieri debeat querela,] cum desides et sui juris contemptores non juvat juris beneficium, et VIGILANTIBUS ET NON DORMIENTIBUS JURA SUBVENIUNT*; it is to be known that [the plaint ought to be made] at once and without delay,—for the favor of the law does not help those who are slothful and neglect their rights, and the laws aid those who are vigilant, and not those who sleep. *Bract.* fol. 175 b. The maxim seems to be derived from the civil law. *Calv. Lex. Spiegelius*. It is applied to the contract of sale, as expressive of the same principle with *Caveat emptor*, viz.: that purchasers should exercise proper vigilance and caution. 2 *Kent's Com.* 487, 488, note.

VIGILIA. L. Lat. In old English law. Watch. *Fleta*, lib. 2, c. 52, § 28.

A wake. *Id.* lib. 2, c. 82, § 3.

VIGORE CUJUS. L. Lat. By force whereof. 1 *Ld. Raym.* 412.

VIIS ET MODIS. L. Lat. (By ways and means.) In practice. The technical name of a citation by which actions against non-residents are sometimes commenced, and which is served by posting up in certain public places; as on the Royal Exchange in London, according to the practice of the English admiralty; or at the Key in Leith, at the market cross of Edinburgh, and the pier and shore of Leith,

according to the practice of Scotland.\*  
*Story's Const. Laws*, § 546.

VILL. [L. Fr. *ville*, from Lat. *villa*, q. v.] In English law. A word of various significations, as

A manor. *Spelman*, voc. *Villa*. *Cowell*.

A tithing. 1 *Bl. Com.* 114. *Spelman*, voc. *Hamel*.

A town. 1 *Bl. Com.* 114. *Litt.* sect. 171. *Co. Litt.* 5 a, 115 b. *Fortescue*, de *L. L. Angliæ*, c. 24, note.

A township. 2 *Stra.* 1004. 4 *M. & S.* 378.

A parish. *Cro. Car.* 150. *Cowell*.

A part of a parish. 1 *Bl. Com.* 115. *Cowell*.

A village. *Spelman*. 12 *Mod.* 546.

\* \* The original meaning of *vill* in England, seems to have been derived from the Roman sense of the term *villa*; a single country residence or farm; a manor, as *Spelman* defines it. See *Town*. In *Bracton's* time, this signification had become antiquated, for he expressly says that a single dwelling-house was not a vill. *Si quis in agris unicum faciat ædificium, non erit ibi villa*. *Bract.* fol. 211. The term, however, was applied to any collection of houses, consisting of more than two. *Id.* fol. 434. 2 *Stra.* 1004. And hence it finally came to comprehend towns and cities. See *Town*. *Britton* gives the relative signification of the terms *vill*, *parish* and *manor*, in the following passage: *Car en une ville purrout estre plusurs paroisses, et en une paroche plusurs maners*; for in one *vill* there may be several *parishes*, and in one parish several *manors*. *Britt.* c. 50. This seems strictly to be the proper subordination of the terms in modern English law; although in some cases a parish may now contain several vill. 1 *Bl. Com.* 115. A farm consisting of a capital mansion, two ancient cottages and one modern one, all rented by one and the same farmer, who occupied the great house himself, and put four laborers and their families into the three cottages, was held to be no *vill*, in respect to the appointment of overseers of the poor. 1 *W. Bl.* 419. 3 *Burr.* 1391, S. C.

VILLA. Lat. [from *vehere*, to carry.] In the Roman law. A farm house; a country residence, (*domus in rure*.) *Gloss.* ad *Dig.* 50. 16. 27. So called, quasi *vehilla*, because the products of the land were carried (*vehabantur*) to it for keeping, and carried away for sale. *Calv. Lex.*

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*Adam's Rom. Ant.* 578. See *Dig.* 50. 16. 211.

VILLA. Lat. In Saxon law. A farm, or country residence; a manor. *Spelman*.

A collection of neighboring houses, consisting of more than two. *Bract.* fol. 212, 434.

A town or vill. See *Vill*. *Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis; et sub appellatione villarum continentur burgi et civitates*; a vill (town) is a collection of several neighboring dwellings, consisting of several neighbors; and under the denomination of *vills* (or towns) are comprehended boroughs and cities. *Co. Litt.* 115 b. See *Town*.

VILLA REGIA. Lat. In Saxon law. A royal residence, (*qua ædes et curia regalis habentur*.) *Spelman*.

VILLAIN. An old form of *villein*. "A villain is such a servant as himself and whatsoever he possesseth is the lord's, if he claim it." *Finch's Law*, b. 2, ch. 10.

VILLAN. A form of *villein*, more closely following the Lat. *villanus*. It is used by *Blackstone* in the expressions *villan socage*, *villan services*. *Bl. L. Tracts*, 95, 96.

VILLANUS. Lat. [from *villa*, a farm, or village.] In old European law. A bondman employed in agricultural labors. So called, because annexed to a farm, or country estate, (*adscriptus villæ*.) Distinguished from a slave or serf, (*servus*), by the circumstances that he paid a fixed rent to his master for the land which he cultivated, and after paying that, all the fruits of his labor and industry belonged to himself in property. 1 *Robertson's Charles V.* Appendix, Note ix. *Brande*.

In old English law. A bondman; an agricultural bondman; a villan, or villein, (q. v.) *Villanus amercietur, salvo wainagio suo*; the villein shall be amerced, saving his wainage, [i. e. his implements of husbandry.] *Magna Charta*, c. 14. 2 *Inst.* 28. *Bract.* fol. 116 b. *Donec villanus ad villanum convincatur*; until the villein shall be proved to be a villein. *Fleta*, lib. 4, c. 22, § 1. *Bracton* uses *villanus* and *servus* indifferently. *Bract.* fol. 246, 25.

VILLANUM SERVITIUM. L. Lat. In old English law. Villein service. *Fleta*, lib. 3, c. 13, § 1.

VILLATA. L. Lat. [from *villa*, a vill, or town.] In old English law. A township. *Stat. Marlbr.* c. 25. *Bract.* fol. 124 b, 150.

An inhabitant of a vill or town; a townsman. *Bract.* 143 b, 154.

VILLE. L. Fr. In old English law. A vill; a town. *Britt.* c. 50. *Litt.* sect. 171.

VILLEIN, *Villeine, Villeyn, Villain, Vileyn, Vyleyn.* L. Fr. and Eng. [from Fr. *ville*, Lat. *villa*, a country residence, a farm, or village.] In old English law. A feudal tenant of the lowest class, who held by base and uncertain services, and was employed in rustic labors of the most sordid kind; an agricultural bondman, of little better condition than a slave.

\* \* The word *villein* seems to be of Norman origin, although the class of persons to whom it was applied existed among the Saxons in a state of even grosser degradation. 2 *Bl. Com.* 92. "These villeins," observes Sir W. Blackstone, "belonging principally to lords of manors, were either *villeins regardant*, that is, annexed to the manor or land; or else they were *in gross*, or at large, that is, annexed to the person of the lord, and transferable by deed from one owner to another. They could not leave their lord without his permission; but if they ran away, or were purloined from him, might be claimed and recovered by action, like beasts, or other chattels. They held, indeed, small portions of land, by way of sustaining themselves and families, but it was at the mere will of the lord, who might dispossess them whenever he pleased; and it was upon villein services, that is, to carry out dung, to hedge and ditch the lord's demesnes, and any other the meanest offices; and their services were not only base, but uncertain both as to their time and quantity. A villien, in short, was in much the same state with us, as Lord Molesworth describes to be that of the *boors* in Denmark, and which Stiernhook attributes also to the *traals* or slaves in Sweden, which confirms the probability of their being, in some degree, monuments of the Danish tyranny." 2 *Bl. Com.* 93. As to the condition of villeinage, see *Yearb.* M. 7 Edw. II. 214. T. 8 Edw. II. 280. See a count for a villein, *Yearb.* M. 19 Hen. VI. 65.

The Lat. *villanus*, and Fr. *villeyn* are used by Bracton and Britton as respectively synonymous with *servus*, and *serf*, a slave. *Bract.* fol. 6 b, 7, 24 b, 25. *Britt.* c. 31. The following passage from the former author presents in few words a forcible picture of the villein's abject condi-

tion: *Servi autem sub potestate dominorum sunt, nec solvitur dominica potestas quamdiu manentes fuerint in villenagio, levantes et cubantes, sive terram tenuerint sive non. Item si non sunt manentes in villenagio, sed vagantes per patriam, euntes et redeuntes, semper sub potestate dominorum sunt quamdiu redierint, et cum consuetudinem revertendi habere desierint, incipiunt esse fugitivi ad similitudinem cervorum domesticorum.* (But slaves are under the power of their lords, nor is their lords' power dissolved as long as they are abiding in villenage, *levant et couchant*, whether they hold land or not. Also, if they are not abiding in villenage, but wandering through the country, going and returning, they are always under the power of their lords, as long as they continue to return, and when they cease to have the habit of returning, they begin to be fugitives, after the likeness of tamed deer.) *Bract.* fol. 66.

VILLEIN IN GROSS. In old English law. A villein who was annexed to the person of the lord, and transferable by deed from one owner to another. 2 *Bl. Com.* 93.

VILLEIN REGARDANT. L. Fr. and Eng. In old English law. A villein annexed to the lord's manor, or land, (*villæ ascriptus*.) 2 *Bl. Com.* 93. *Cowell.*

VILLEIN SERVICES. [L. Lat. *vil-lana servitia*.] In old English law. Base services, such as villeins performed. 2 *Bl. Com.* 93. They were not, however, exclusively confined to villeins, since they might be performed by freemen, without impairing their free condition. *Bract.* fol. 24 b.

VILLEIN SOCAGE. [L. Lat. *vil-lanum socagium*.] In old English law. A privileged kind of villenage; the tenants, (who were called *villein socmen*, or *sokemen*,) doing villein services, but of a certain and determinate kind. *Bract.* fol. 26 b, 209. 2 *Bl. Com.* 98—100.

VILLENAGE. [L. Lat. *villenagium*.] In old English law. The state, condition, service or tenure of a villein; bondage.\* A servile kind of tenure belonging to lands or tenements, whereby the tenant was bound to do all such services as the lord commanded, or were fit for a villein to do. *Cowell.* See *Villein*.

VILLENAGIUM. L. Lat. In old English law. Villenage; the condition or tenure of a villein; bondage. *Glanv.* lib. 5, c. 1.

That part of a lord's lands where his villeins dwelt. *Bract*. fol. 6 b.

**VILLENOUS JUDGMENT.** [L. Lat. *villanum judicium*.] In old English law. A sentence which cast the reproach of villany and shame upon him against whom it was given. *Cowell*. This was formerly pronounced upon conspirators; and it was that they should lose their *liberam legem*, [frank-law,] whereby they were discredited and disabled as jurors or witnesses; forfeit their goods and chattels and lands for life; have their lands wasted, their houses razed, their trees rooted up, and their own bodies committed to prison. 4 *Bl. Com.* 136.

**VILLEYN.** L. Fr. In old English law. A villein. *Si ascun villeyn purchase tenement à luy et à ses heires, de autre que de son seignour, et autre que son seignour luy engette, pousse le villeyn recoverer par ceste assyse encontre toutes gentz, forsque vers son seignour*; if any villein purchase a tenement to him and to his heirs, of another than of his lord, and another than his lord eject him, the villein may recover by this assize against all persons except against his lord. *Britt.* c. 38. *Car le pleyntyfe est mon villeyn*; for the plaintiff is my villein. *Id.* c. 49.

*Vim vi repellere licet, modo fiat modera- mine inculpatæ tutelæ, non ad sumendam vindictam, sed ad propulsandam injuriam.* It is lawful to repel force by force, provided it be done with the moderation of blameless defence, not for the purpose of taking revenge, but to ward off injury. *Co. Litt.* 162 a.

**VINCULACION.** Span. In Spanish law. An entail. *Schmidt's Civ. Law*, 308.

**VINCULO.** Span. [from Lat. *vinculum*.] In Spanish law. The bond, chain or tie of marriage. *White's New Recop.* b. 1, tit. 6, c. 1, § 2.

**VINCULUM.** Lat. A chain; a connected series; a connection or relation. See *Consanguinity*.

A bond; a band; a tie. *Vinculum matrimonii*; the bond or tie of marriage; the matrimonial obligation.

The binding force of law. *Obligatio est juris vinculum*; obligation is a bond of law, or legal tie. *Bract*. fol. 99.

**VINDICARE.** Lat. In the civil law. To claim, or challenge; to demand one's own; to assert a right in or to a thing; to assert or claim a property in a thing; to claim a thing as one's own. *Calv. Lex.*

To avenge; to punish.

**VINDICATIO.** Lat. [from *vindicare*, q. v.] In the civil law. The claiming a thing as one's own; the asserting of a right or title in, or to a thing.

The name of an *action in rem*, by which a thing or right was claimed. *Appellamus autem in rem quidem actiones*, vindicationes; we call actions *in rem*, vindications. *Inst.* 4. 6. 15. *Id.* 4. 6. 1. See *Dig.* 6. 1.

**VINUM.** Lat. Wine. As to the interpretation of this word in the civil law, see *Dig.* 33. 6. 9.

**VINUM ADUSTUM.** L. Lat. In old English law. Brandy. *Bunb.* 119, case 185. Literally, burnt wine.

**VIOL.** Fr. In French law. Rape. *Barr. Obs. Stat.* 139.

**VIOLENT PRESUMPTION.** In the law of evidence. Proof of a fact by the proof of circumstances which necessarily attend it. 3 *Bl. Com.* 371. Sometimes called a *necessary* presumption. Violent presumption is many times equal to full proof. *Id.* *Violenta præsumptio* [aliquando est] *plena probatio*. *Co. Litt.* 6 b. As if a landlord sues for rent due at Michaelmas, 1754, and the tenant cannot prove the payment, but produces an acquittance for rent due at a subsequent time, in full of all demands, this is a violent presumption of his having paid the former rent, and is equivalent to full proof; for though the actual payment is not proved, yet the acquittance in full of all demands is proved, which could not be without such payment; and it therefore induces so forcible a presumption, that no proof shall be admitted to the contrary. 3 *Bl. Com. ub. sup.* See *Burr. Circ. Evid.* 60—67.

**VIOLENT PROFITS.** In Scotch law. The double of the rent of a tenement within a burgh, or the highest profits a party could make of lands in the country; recoverable against a tenant in a process of removing. 1 *Forbes' Inst.* part 2, p. 157. *Ersk. Inst.* b. 2, tit. 6, § 24. So called, because the law considers the tenant's possession, after the warning, as *violent*. *Id. ibid.* See *Bell's Dict.*

*Viperina est expositio quæ corrodit viscera textus.* That is a viperous interpretation which eats out the bowels of the text. 11 *Co.* 34 a, *Powtler's case*. The force of the very strong epithet *viperina* is much weakened by the translation "*bad exposition*," given in Branch and Wharton.

**VIR.** Lat. A man; a husband. *Vir*

*et uxor sunt quasi unica persona, quia caro una et sanguis unus; res licet sit propria uxoris, vir tamen ejus custos, cum sit caput mulieris*; husband and wife are, as it were, one person, because one flesh and one blood; though a thing may be the property of the wife, yet the husband is the keeper of it, since he is the head of the woman. *Co. Litt.* 112 a.

**VIR ET UXOR CENSENTUR IN LEGE UNA PERSONA.** Husband and wife are regarded in law as one person. *Jenk. Cent.* 27.

**VIRGA.** Lat. [L. Fr. *verge*.] In old English law. A rod or white staff, such as sheriffs, bailiffs, &c. carried as a badge or ensign of their office. *Cowell.*

**VIRGA.** L. Lat. [Sax. *gird*, *gyrd*.] In old English law. A yard. *Spelman.*

**VIRGA ALNARIA**; a yard measured according to the legal ell or true standard. *Cowell. Cartular. Radinges*, MS. fol. 120, cited *ibid.*

**VIRGA FERREA**; the iron yard; the standard yard which was of iron; a yard according to that standard. *Cowell. Lib. Cart. Prior. Leominstr.* cited *ibid.*

**VIRGA TERRÆ**, (or **VIRGATA TERRÆ**.) L. Lat. In old English law. A yard-land, (Sax. *girdland*;) a measure of land of variable quantity, containing in some places twenty, in others, twenty-four, in others, thirty, and in others, forty acres. *Cowell. Co. Litt.* 5 a. *Shep. Touch.* 93.

**VIRGATA REGIA.** L. Lat. In old English law. The royal verge; the verge; the bounds of the king's household, within which the court of the steward had jurisdiction. *Crabb's Hist.* 185. A space of twelve leagues in circuit around the king's palace or residence. *Fleta*, lib. 2, c. 2, § 2; c. 4, § 2.

**VIRGATOR.** L. Lat. In old English law. A verger. *Fleta*, lib. 2, c. 38.

**VIRIDARIUS.** L. Lat. In old English law. A verderor, (q. v.) *Reg. Orig.* 177 b.

**VIRIDIS**, *Viride*. Lat. In old English law. Vert, (q. v.) *Cowell*, voc. *Vert*.

**VIRIDIS CERA.** L. Lat. In old English law. Green wax, (q. v.)

**VIRIPOTENS.** Lat. [from *vir*, a man, and *potens*, capable.] In the civil law. Marriageable; viripotent, (*quæ virum pati potest*.) *Dig.* 36. 2. 30. *Calv. Lex.*

**VIRO**, *Virro*. L. Lat. In old European law. An old form of *baro*, (q. v.) and of the same signification. Answering

to the Saxon *thane*. *Spelman* calls it a Norman word.

**VIRTUS.** Lat. In old English practice. The substance or tenor. *Tunc legat prothonotarius virtutem brevis*; then the prothonotary shall read the substance of the writ. *Bract.* fol. 185 b. *Virtus actionis*; the substance of the action. *Fleta*, lib. 2, c. 65, § 11.

**VIRTUTE CUJUS.** Lat. By virtue whereof. 1 *Ld. Raym.* 412. 3 *Salk.* 352.

**VIRTUTE OFFICII.** L. Lat. By virtue of office. 15 *Johns. R.* 269, 270. Distinguished from *colore officii*, (q. v.)

**VIS.** Lat. In the civil and old English law. Force; the onset or pressure of a greater thing, which cannot be repelled, (*majoris rei impetus, qui repelli non potest*.) *Paulus, Sent.* lib. 1, tit. 7. *Dig.* 4. 2. 2. *Calv. Lex. Præteus*. This definition of the civil law is slightly modified by Bracton, who is followed by *Fleta*; *majoris rei impetus cui resisti non potest*. *Bract.* fol. 162. *Fleta*, lib. 4, c. 4, § 1.

Violence; unlawful violence. *Co. Litt.* 161 b. Whatever is done without any authority of law, against the free will of any one (*quicquid nullo jure fit, contra liberam alicujus voluntatem*.) *Calv. Lex.* The opposite of law or right. *Id.*

The act of seeking one's remedy without authority or process of law. *Vis est quoties quis quod sibi deberi putat, non per judicem reposcit*. *Bract.* fol. 162 b. This is copied from *Dig.* 4. 2. 13.

Efficacy; virtue; power to produce an effect. *Scire leges, non est verba earum tenere, sed vim et potestatem*. To know the laws is not to observe their mere words, but their force and power. *Dig.* 1. 3. 17. *Vis* and *potestas*, however, were distinguished by the civilians; the former being considered the stronger term. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 13, § 203, note.

**VIS ET METUS.** Lat. In Scotch law. Force and fear. *Bell's Dict.*

**VIS ABLATIVA.** Lat. In the civil law. Ablative force; force which is exerted in taking away (*auferendo*) a thing from another. *Calv. Lex.* Bracton adopts this term, but seems to confine it to force used in removing a moveable thing from an immoveable one, and makes it convertible with *vis perturbativa*, (q. v.) *Bract.* fol. 162.

**VIS ARMATA.** In civil and old English law. Armed force; force exerted by

means of arms, weapons or any thing that can hurt or injure. *Est vis armata, non solum si quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent quo nocere possunt*; that is armed force, not only where one comes with weapons, but we call all those armed who have any thing with which they can hurt. *Bract. fol. 162. Telorum autem appellatione omnia in quibus singuli homines nocere possunt, accipiuntur; sed si quis venerit sine armis, et in ipsa concertatione ligna sumpserit, fustes et lapides, talis dicitur vis armata*; under the denomination of weapons are understood all things with which men may hurt each other; but if one comes without arms, and in the heat of strife takes up stakes, clubs and stones, this will be called armed force. *Id. fol. 162 b. Fleta, lib. 4, c. 4, § 4. Co. Litt. 162 a. Dig. 43. 16. 3. 2, 3, 4, 5.*

**VIS CLANDESTINA.** Lat. In old English law. Clandestine force; such as is used by night. *Alia vis clandestina, et de nocte. Bract. fol. 162.*

**VIS COMPULSIVA.** In civil and old English law. Compulsive force; that which is exerted to compel another to do an act against his will; force exerted by menaces or terror. *Est vis compulsiva quæ aliquando metum inducit, ubi scilicet quis alium in carcere et in vinculis detinuerit, vel evaginato gladio, compulerit ad aliquid dandum vel faciendum contra ipsius voluntatem*; compulsive force is that which sometimes induces fear, as, for instance, where one detains another in prison and in chains, or, drawing a sword, compels him to give or do something against his will. *Bract. fol. 162.*

**VIS DIVINA.** Lat. [Gr. Θεοῦ βία.] In the civil law. Divine or superhuman force; the act of God. *Vinnius ad Inst. lib. 3, tit. 15, § 2, n. 5. Dig. 19. 2. 25. 6.*

**VIS EXPULSIVA.** Lat. In old English law. Expulsive force; force used to expel another, or put him out of his possession. Bracton contrasts it with *vis simplex*, and divides it into expulsive force with arms, and expulsive force without arms. *Bract. fol. 162. Expulsiva [vis] locum habet in rebus corporalibus et immobilibus, sicut in terris et tenementis. Item locum habet in rebus incorporalibus, sicut in iis quæ in jure consistunt, sed non ita omnino, sed in parte et alio modo*; expulsive force has place in [takes place, or may be exercised upon] corporeal and immoveable things, as

in lands and tenements. It also has place in incorporeal things, as in those things which consist in right, though not altogether, but partly, and with modification. *Id. ibid.*

**VIS EXTURBATIVA.** Lat. In the civil law. Exturbative force; force used to thrust out (*exturbare*) another. Force used between two contending claimants of possession, the one endeavoring to thrust out the other. *Calv. Lex.*

**VIS FLUMINIS.** Lat. In the civil law. The force of a river or stream; the force exerted by the rapidity or magnitude of a current of water. *Quod si vis fluminis de tuo prædio attulerit, palam est, eam tuam permanere*; but if the force of a stream should sweep away a part of your land, and carry it to your neighbor's land, it is clear that it would still continue yours. *Inst. 2. 1. 21.* More fully expressed in the Digests: *Quod si vis fluminis partem aliquam ex tuo prædio detraxerit, et meo prædio attulerit, palam est eam tuam permanere. Dig. 41. 1. 7. 2.* This is copied, with some variation, in *Fleta. Fleta, lib. 3, c. 2, § 6.*

**VIS IMPRESSA.** Lat. Impressed force. The original act of force out of which an injury arises, as distinguished from *vis proxima*, the proximate force, or immediate cause of the injury. 2 *Greenl. Evid. § 224.* "There, the original motion, the *vis impressa*, is continued, though diverted." Blackstone, J. 2 *W. Bl.* 895.

**VIS INERMIS.** Lat. In old English law. Unarmed force; the opposite of *vis armata*, (q. v.) *Bract. fol. 162.*

**VIS INJURIOSA.** Lat. In old English law. Wrongful force; otherwise called *illicita*, (unlawful.) *Bract. fol. 162.*

**VIS INQUIETATIVA.** Lat. In the civil law. Disquieting force. *Calv. Lex.* Bracton defines it to be where one does not permit another to use his possession quietly and in peace, (*ubi quis non permittit alium uti possessione, quiete et in pace.*) *Bract. fol. 162.*

**VIS LAICA.** L. Lat. In old English law. Lay force; an armed force used to hold possession of a church. *Reg. Orig. 59, 60.* See *De vi laica amovenda.*

**VIS LICITA.** Lat. In old English law. Lawful force. *Bract. fol. 162.*

**VIS MAJOR.** Lat. In the law of bailment. Irresistible force, (*cui resisti non potest*;) such an interposition of human agency as is, from its nature and power,

absolutely uncontrollable; as the inroads of a hostile army, or public enemies, piracy and robbery by force. *Story on Bailm.* §§ 25, 26, 246, 249. *Fleta*, lib. 2, c. 72, § 16.

In the civil law, this term is sometimes used as synonymous with *vis divina*, or the act of God. *Calv. Lex.* See *Dig.* 19. 2. 25. 6.

**VIS PERTURBATIVA.** Lat. In old English law. Perturbative force. Force used between parties contending for a possession. Or, as Bracton explains it, where one contends that he possesses the thing, though he has not the right, and the other asserts that he is in possession, since he has the right, (*ubi quis contendit se possidere cum jus non habeat, et alius dicat se esse in possessione, cum jus habeat.*) *Bract.* fol. 162.

**VIS PROXIMA.** Lat. Immediate force. See *Vis impressa*.

**VIS SIMPLEX.** L. Lat. In old English law. Simple or mere force. Distinguished by Bracton from *vis armata*, and also from *vis expulsiua*. *Bract.* fol. 162.

**VISCONTE,** *Viscont,* *Viscounte.* L. Fr. In old English law. Sheriff. *Britt.* c. 2. *Stat. Westm.* 1, c. 17. *Fet Assaver*, §§ 52, 59. *A touz les viscountes des counteez*; to all the sheriffs of the counties. *Conf. Cartar.* 25 Edw. I.

**VISCOUNT,** *Vicount.* [L. Fr. *viscounte*, *visconte*, *viscont*, *viconte*, *vicont*, from Lat. *vice-comes*, q. v.] In old English law. Sheriff. *Cowell.* *Reg. Orig.* 302 b. But the L. Fr. words just given were more commonly used in this sense. In the Royal Court of Jersey, however, the sheriff is still called *viscount*. 7 *Ad. & Ell.* N. S. 984.

In modern English law. A degree of nobility next to an earl. *Cowell.* 1 *Bl. Com.* 398. Strictly, a *vice-carl*. The Lat. *comes* and *vice-comes*, show more clearly than the English, the connection of these titles. *Viscount*, according to Camden, is an old name of office, but a new one of dignity, never heard of in England till the reign of Henry VI. who in his eighteenth year, in parliament, created John Lord Beaumont, Viscount Beaumont. *Camd. Brit.* 170. *Cowell. Co. Litt.* 69 b. 9 Co. 125 a.

**VISINETUS.** L. Lat. In old English law. Venue. *Tunc sumnoneas, &c. de visinetu suburbii London quod sint coram, &c.*; then summon, &c. of the visne of the

suburb of London, that they be before, &c. *Reg. Orig.* 33.

**VISITATION.** Inspection; superintendence; direction; regulation. A power given by law to the founders of all eleemosynary corporations. 2 *Kent's Com.* 300—303. 1 *Bl. Com.* 480, 481. In England, the visitation of ecclesiastical corporations belongs to the ordinary. *Id. ibid.*

**VISITATION**, in the law of nations, is distinguished from *search*, though the terms are constantly used in connection with each other. The *right of visitation* is sometimes called the *right of visit*. The British government disclaim the right of *search* in time of peace, but they claim at all times the right of *visit*, in order to know whether a vessel, pretending, for instance, to be American, and hoisting the American flag, be really what she seems to be. 1 *Kent's Com.* 153, note. The *inter-visitation* of ships at sea is a branch of the law of self-defence, and is, in point of fact, practised by the public vessels of all nations, including those of the United States, when the piratical character of a vessel is suspected. The right of *visit* is conceded for the sole purpose of ascertaining the real national character of a vessel sailing under suspicious circumstances, and is wholly distinct from the right of *search*. It has been termed by the Supreme Court of the United States, the right of approach for that purpose. *Id. ibid.* See *Search, Right of*.

**VISITATION BOOKS.** In English law. A series of books belonging to the College of Arms, or Herald's College, containing the pedigrees and arms of the nobility and principal gentry in England, made out by the heads of the respective families, or some person on their behalf, and delivered to the heralds, who, by virtue of commissions from the crown, were authorized to require them to be made out, proved and delivered. *Hubback's Evid. of Succession*, 538, 541. By the terms of their commissions, the heralds were authorized to make circuits through the different counties within their respective provinces, and "to peruse and take knowledge, survey and view of all manner of arms, cognizances, crests and other like devices, with the notes of the descents, pedigrees and marriages of all the nobility and gentry therein," &c. *Id.* 541. The books or records compiled from the materials obtained during these visitations or progresses, were hence called *visitation books*, and they are

frequently admitted as evidence in the courts. *Id. ibid.* 1 *Bl. Com.* 105.

**VISNE.** L. Fr. [L. Lat. *visnetum*, q. v.] In old English law. Venue; vicinity; vicinage; neighborhood; a neighboring place. *Deux fraunks homes terre tenauntz del visne*; two freemen, terre-tenants of the neighborhood. *Britt.* c. 45. *Loialx gents de la visne ou tiel fact si fist*; lawful men from the vicinity where the act was done. *Rot. Parl.* 4 Hen. IV. See *Venue*.

A neighbor. *Qui ilz voient somoundre lez visnes de estre à certain jour*; that they go to summon the neighbors to be at a certain day. *Britt.* c. 45.

*Visne* is often used as an English word in the old books. "A jury out of the visne." 1 *Leon.* 301. "The visne shall come from both places." *Id. ibid.* "The visne may better know the truth." *Id. ibid.* And see 3 *Id.* 172.

**VISNETUM.** L. Lat. In old English law and practice. Neighborhood; vicinity; vicinage; venue or visne. *Præcipimus tibi quod venire facias coram te, et coram custodibus placitorum coronæ nostræ in pleno comitatu tuo, xii tam liberos quam legales homines de visneto tali, per quos rei veritas melius sciri poterit*; we command you, that you cause to come before you, and before the keepers of the pleas of our crown, in your full county court, twelve free and lawful men of such a neighborhood [or venue] by whom the truth of the matter may be better known. *Bract.* fol. 309 b. See *Id.* fol. 397. *Per testimonium visneti sui deliberatus est*; is delivered or acquitted by the testimony of his neighborhood. *Id.* fol. 154. See *Fleta*, lib. 4, c. 5, § 4.

**VISORES.** L. Lat. [L. Fr. *vejours*.] In old English practice. Viewers; persons appointed to view one who had cast an *essoin de malo lecti*, or, in other words, had excused himself from appearing in court on the ground of infirmity or sickness. *Bract.* fol. 354, 361.

Jurors in certain actions. *Fleta*, lib. 4, c. 6, § 1.

**VISUS.** Lat. [from *videre*, to see.] In old English practice. View; inspection, either of a place or person. See *View*.

Examination or inspection by jurors of the subject of an action. *Fleta*, lib. 4, c. 6, § 1, *et seq.* *Id.* lib. 6, c. 21.

View or inspection of a person who had cast an *essoin de malo lecti*, made by four knights called viewers, (*visores*;) its object

being to ascertain by personal inspection whether the sickness or infirmity was real, and what was its character. Bracton treats at length of the practice under this head. *Bract.* fol. 352—362.

**VISUS FRANCI PLEGII.** L. Lat. In old English law. View of frank-pledge. Otherwise termed *visus de franco plegio*. *Magna Charta*, 9 Hen. III. c. 35. *Bract.* fol. 155. *Fleta*, lib. 2, c. 52, § 2.

**VISUS TERRÆ.** L. Lat. In old English practice. View of land. *Stat. Westm.* 2, c. 48.

**VITA.** Lat. In old English law. Life. *Ad vitam vel in feodo*; for life or in fee. *Bract.* fol. 13 b. *Ad terminum vitæ vel annorum*; for a term of life or for years. *Id. ibid.*

**VITAILLE.** L. Fr. In old English law. Victual; provision; food. *De blee, ou de autre vitaille, ou des autres necessaries*; of grain, or of other victual, or of other necessities. *Britt.* c. 45.

**VITIOUS INTROMISSION.** In Scotch law. An unwarrantable intermeddling with the moveable estate of a person deceased, without the order of law. *Ersk. Pr. b.* 3, tit. 9, § 25.—The irregular intermeddling with the effects of a deceased person, which subjects the party to the whole debts of the deceased. 2 *Kames' Equity*, 327.

**VITIUM.** Lat. In the civil law. Fault; defect; imperfection; blemish; bodily defect; vice. *Dig.* 21. 1. *Id.* 50. 16. 101. 2. Distinguished from *morbus*, (disease.) *Id. ibid.* See *Vice*.

In old English law. Fault; mistake; error. See *Vitium clerici*, *Vitium scriptoris*.

**VITIUM CLERICI.** L. Lat. In old English law. The mistake of a clerk; a clerical error. Lord Ellenborough, C. J. 4 *M. & S.* 100. *Vitium clerici nocere non debet*. A clerical error ought not to prejudice. *Jenk. Cent.* 23.

**VITIUM SCRIPTORIS.** L. Lat. In old English law. The fault or mistake of a writer, or copyist; a clerical error. *Gilb. For. Rom.* 185. *Comb.* 4.

**VITRICUS.** Lat. In the civil law. A step-father; a mother's second husband. *Dig.* 38. 10. 4. 6. *Calv. Lex.* *Cooper's Just. Inst. Notes*, \*429.

**VIVA AQUA.** In the civil law. Living water; running water; that which issues from a spring or fountain, (*quæ fonte exit*.) *Calv. Lex.*

**VIVA PECUNIA.** L. Lat. In old English law. Live cattle. See *Pecunia*.

**VIVA VOX.** Lat. The living voice; oral utterance, as distinguished from written words. Hence the common phrase, *vivâ voce*, by word of mouth.

In old English law. A living witness, as distinguished from a writing offered in evidence. *Et quod ita sit, producat sectam sufficientem, vivam vocem, vel aliquem qui paratus sit hoc disrationare*; and [to prove] that it is so, he should produce a sufficient suit, a living witness, or any one who may be prepared to establish this. *Bract.* fol. 382. *Fleta*, lib. 6, c. 23, § 15. See *Vive voys*.

**VIVARIUM.** Lat. [from *vivus*, alive; Græco-barb. βιβρίον.] In the civil law. An enclosed place, where live wild animals are kept. *Calv. Lex. Spelman. A. Gell. Noct. Att.* ii. 20.

In old English law. A place in land or water where living things are kept; a vivary. Most commonly in law it signifies a park, warren or fishery. In the statute of Merton, (c. 11,) it is taken for a warren and fishery. 2 *Inst.* 100. See *Vivary, Viver*. *Fleta*, lib. 2, c. 41, § 2.

**VIVARY.** [Lat. *vivarium*; L. Fr. *viver*, qq. v.] In English law. A place for keeping wild animals alive, including fishes; a fish-pond, or fishery. See *Viver*.

**VIVER.** L. Fr. [from Lat. *vivarium*, q. v.] In old English law. A fish-pond; a fishery or fishing place. *De pescher en autry viver*; to fish in another's pond. *Britt.* c. 71. *Stat. Westm.* 1, c. 1, 20. *Les fosses, et les vivers, et les hayes*; the ditches, and the ponds, and the hedges. *Britt. ub. sup.*

Meat; food or victual, (Lat. *victus*.) *A trover estovers en viver, ou en vesture*; to find estovers in meat or in clothing. *Stat. Glocest.* c. 4.

**VIVERE.** Lat. To live. As to the interpretation of this word in the civil law, see *Dig.* 50. 16. 234. 2.

**VIVEVOYS, Vive voys.** L. Fr. [from Lat. *viva vox*, q. v.] In old English law. A living witness; the testimony of a witness; oral or parol testimony. *Et si la chartre soit de purr feffement sauns condicion, et le done soit graunte ou prove, adonques n'est mester à crere nule vivevoys à parler de condicion, pur la presumpcion de la chartre que ne tesmoigne nule condicion*; and if the charter be of pure feoffment without condition, and the gift be granted

or proved, then there is no necessity to listen to the testimony of any living witness to speak of a condition, in consequence of the presumption of the charter, which testifies to no condition. *Britt.* c. 51. Elsewhere written as two words; *vive voys*. *Id.* c. 85.

**VIVUM VADIUM.** L. Lat. [L. Fr. *vif gage*.] In old English law. A living pledge; that kind of a pledge in which the rents and profits of the thing pledged went towards the discharge of the debt. See *Mortgage*. *Vivum vadium*, or living pledge, is when a man borrows a sum (suppose 200*l.*) of another, and grants him an estate, as of 20*l.* per annum, to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void, as soon as such sum is raised. And in this case the land or pledge is said to be *living*; it subsists, and survives the debt; and immediately on the discharge of that, results back to the borrower. 2 *Bl. Com.* 157. In a pledge of this kind, the creditor took actual possession of the estate and received the rents, and applied them, from time to time, in liquidation of the debt. When it was satisfied, the debtor might re-enter, and maintain ejectment. *Coote on Mortg.* 8, 9.

**VIX.** Lat. Scarcely; hardly; rarely. *Vix ulla lex fieri potest quæ omnibus commoda sit, sed si majori parti prospiciat, utilis est*. Scarcely any law can be made which is adapted to all, but if it provide for the greater part, it is useful. *Plowd.* 369.

**VOCABULA ARTIS.** Lat. Words of art; "vocables" of art; technical terms. *Co. Litt.* pref. 5 *Co.* 121 b, *Long's case*.

*Vocabula artium explicanda sunt secundum definitiones prudentum.* Terms of arts are to be explained according to the definitions of the learned or skilled [in such arts.] *Puffend. de Offic. Hom.* lib. 1, c. 17, § 3. *Bl. L. Tr.* 6. See *Grotius de Jur. Bell.* lib. 2, c. 16, § 3.

**VOCABULUM.** Lat. A name. *Vocabula rerum*; the names of things. *Fleta*, lib. 4, c. 10, § 11.

**VOCANS.** Lat. [from *vocare*, to vouch.] In old practice. One who vouches another; a voucher. *Bract.* fol. 380.

**VOCARE.** Lat. To call; to call upon. In old English practice. To vouch; to call upon one to warrant another's title (*vocare ad warrantum*) or defend it. *Si ita vocaverit, voco talem, filium et hæredem*

*talis, valet talis vocatio*; if he vouch thus, "I vouch such a one, son and heir of such a one," such a voucher is good. *Bract.* fol. 382 b. A. vocat B. *ad warrantum versus* C.; A. vouches B. to warranty against C. *Id.* fol. 381 b.

VOCARE AD CURIAM. L. Lat. In feudal law. To summon to court. *Feud. Lib.* 2, tit. 22.

VOCARE IN JUS. Lat. In the Roman law. To summon to court; to cite or summon before the prætor or magistrate. *Calv. Lex. Adam's Rom. Ant.* 242.

VOCAT'. L. Lat. In old pleading. Called. An abbreviation of *vocatus, vocata, vocati*, &c. used apparently to avoid the necessity of varying the termination, in order to adapt it grammatically to the words with which it was connected. This word was constantly used in the old Latin pleadings, as immediately introductory to the English name of a thing, where no equivalent Latin word could be found, or where it was not deemed safe to frame one. Thus, "*instrumentum, vocal'* a plate for a jack;" an instrument called a plate for a jack. *Towns. Pl.* 102. Sometimes the word *Anglicè*, (in English,) was used for the same purpose, and occasionally both together. See *Law Latin*.

VOCATIO. L. Lat. [from *vocare*, to vouch.] In old practice. Voucher; a calling to warrant. *Bract.* fol. 382 b. See *Vocare*.

VOCATUS. L. Lat. [from *vocare*, to vouch.] In old practice. One who was called or vouched; a vouchee. *Bract.* fol. 381, 382.

In old European law. An advocate; a patron. *Chart. Alam.* 32. *Spelman*.

VOCHE. L. Fr. [from *vocher*, q. v.] In old practice. A vouchee. *Le voche n'est mye trove*; the vouchee is not found. *Britt.* c. 15.

VOCHEOUR. L. Fr. [from *vocher*, q. v.] In old practice. A voucher; one who vouches or calls another to warrant. *Si ad le vocheour fait default*; if the voucher have made default. *Britt.* c. 75.

VOCHER. L. Fr. [from Lat. *vocare*, q. v.] In old practice. To vouch; to call to warrant. *Britt.* c. 75.

A vouching, or voucher. *En tiel cas, cherrount les tenantz en lour vocher*; in such case, the tenants shall fail in their voucher. *Id. ibid.*

A voucher; a person vouching. *Et issi*

*de vocher en vocher*; and so from voucher to voucher. *Id. ibid.*

VOCHERESSE. L. Fr. A female voucher; a woman who vouched. *A defendre la vocheresse v's le pleyntyfe*; to defend the voucheresse against the plaintiff. *Britt.* c. 108.

VOCIFERATIO. Lat. In old English law. Outcry; hue and cry. *LL. Hen.* I. c. 12. *Cowell*.

VOCO. Lat. In civil and old English law. I call; I summon; I vouch. *In jus voco te*; I summon you to court; I summon you before the prætor. The formula by which a Roman action was anciently commenced. *Adam's Rom. Ant.* 242.

*Voco talem*; I call or vouch such a one. The old formula of vouching to warranty. *Bract.* fol. 382 b. *Fleta*, lib. 6, c. 23, § 20.

VODEGELDUM. L. Lat. In old English law. Woodgeld, (q. v.) *Spelman*.

VOER. L. Fr. In old English law. To view; to see or inspect. *Et puis vist le coroner, et les jurors ove luy, voer le cors, et les playes*; and afterwards let the coroner go, and the jurors with him, to view the body and the wounds. *Britt.* c. 1. *Que le tenaunt voet sauns jour*; that the tenant go without day. *Id.* c. 76.

VOEVE, Voef. L. Fr. Widow. *Kelham*.

VOID. [L. Fr. *voyde*.] Of no force, or effect; absolutely null; that cannot be confirmed, or made effectual. A thing may be void in several degrees; it may be void as to some persons or purposes, and valid as to others. *Spencer, C. J. 18 Johns. R.* 527, 528, citing *Bac. Abr. Vin. Abr. h. t.*

VOIDABLE. That may be avoided, or declared void; not absolutely void, or void in itself; that may be avoided or confirmed. Most of the acts of infants are *voidable* only, and not absolutely void. *2 Kent's Com.* 234.

"The term 'void,' as applicable to conveyances, or other agreements, has not at all times been used with technical precision, nor restricted to its peculiar and limited sense, as contradistinguished from 'voidable;' it being frequently introduced, even by legal writers and jurists, when the purpose is nothing further than to indicate that a contract was invalid, and not binding in law. But the distinction between the terms 'void' and 'voidable,' in their application to contracts, is often one of great practical

importance; and whenever entire technical accuracy is required, the term 'void' can only be properly applied to those contracts that are of no effect whatsoever; such as are a mere nullity, and incapable of confirmation or ratification." Dewey, J. 6 *Metcalf's R.* 417.

**VOIDANCE.** [Lat. *vacatio*.] In ecclesiastical law. A want of an incumbent upon a benefice. *Cowell*.

**VOIER, Veier.** L. Fr. [from Lat. *videre*.] In old English law. To see. *Est à voier*; it is to be seen. *Kelham*.

**VOILER, Voiller.** L. Fr. In old English law. To will; to be willing. *L. Fr. Dict.*

**VOILER (or VOLEIR.)** L. Fr. In old practice. To mean; to purport or set forth. A term applied to written instruments, writs, &c. *Yearb. M. 4 Edw. III. 45. M. 5 Edw. III. 26.*

**VOILOIR, Voillour.** L. Fr. In old English law. A will; a testament. *Kelham*.

**VOIR, Voire, Voier, Voyer, Voiar.** L. Fr. [from Lat. *verum*, true.] In old English law. Truth; the truth. *Kelham*.

**VOIRE DIRE.** L. Fr. (To say the truth.) In practice. A preliminary oath administered to a witness, for the purpose of ascertaining whether he has such an interest in the cause in which he is offered to testify, as would disqualify him; he being sworn to say the truth touching matters in which he is thought or suspected to be an interested witness. *Cowell*. The old expression *à dire le verité*, conveyed the same idea. *Yearb. H. 3 Hen. VI. 3.* A witness may now, it seems, be examined on his *voire dire* at any time during the trial. *Holthouse*.

An oath of this kind is sometimes administered to infants, for the purpose of ascertaining their age. *3 Bl. Com. 332.*

**VOLENS.** Lat. [from *velle*, to will or be willing.] Willing. He is said to be willing, who either expressly consents, or tacitly makes no opposition. *Calv. Lex.*

**Volenti non fit injuria.** An injury is not done to the willing. He who consents to a thing, or makes no opposition to it, cannot complain of it as an injury. This maxim occurs in the law of England in this form, as early as the time of Bracton. *Bract. fol. 18.* In the civil law, from which it is substantially derived, it is otherwise more clearly expressed, *Nulla injuria est quæ in volentem fiat.* That is no injury

which is done to a willing party. *Dig. 47. 10. 1. 5.* It has been extensively adopted in the common law of England and the United States. *Yearb. M. 4 Edw. III. 18. Plowd. 501. 1 Salk. 22, pl. 2. Wingate's Max. 482, max. 122. Broom's Max. 127, [201.]* It is a general rule of the English law, that no one can maintain an action for a wrong, where he has consented or contributed to the act which occasions his loss. *Tindal, C. J. 2 Scott, N. R. 257.* It is held inapplicable in equity to the case of a usurious loan. "It would be absurd," it is said, "to apply this maxim to the case of a man who, from mere necessity, pays more [interest] than the other can in justice demand, and who has been significantly called the slave of the lender. He can in no just sense be said to pay voluntarily." *1 Story's Eq. Jur. § 302.* It is also held inapplicable to cases of agreements to break the peace. *3 Jones' (N. C.) Law R. 131.*

**VOLENTES.** Lat. (We being willing.) In old practice. The initial word of the Latin writs of *certiorari*. *Volentes de certis causis certiorari*; we being willing for certain causes to be certified. *Reg. Orig. 169 b. F. N. B. 247 E.*

**VOLO.** Lat. I will; I wish or desire. One of the appropriate words used in Roman testaments to create a trust. *Inst. 2. 24. 3.* Bracton uses it as a term of conveyance. *Bract. fol. 18 b.*

**Voluit, sed non dixit.** He willed, but he did not say. He may have intended so, but he did not say so. A maxim frequently used in the construction of wills, in answer to arguments based upon the supposed intention of a testator. *2 Powell on Devises, (by Jarman,) 625. 4 Kent's Com. 538.* It is applied also in the construction of statutes. The English judges have frequently observed, in answer to the remark that the legislature meant so and so, that they, in that case, have not so expressed themselves, and therefore the maxim applied, *Quod voluit non dixit.* *1 Id. 468, note.* As to the peculiar meaning of *velle* and *dicere* in the civil law, see *Dig. 34. 5. 3.*

**VOLUMEN.** Lat. [from *volvere*, to roll.] In the civil law. A volume; so called from its form, being rolled up. As to the distinction between a volume and a book (*liber*), see *Dig. 32. 52. 1.*

**VOLUMUS.** Lat. (We will.) In old English practice. The first word of a clause inserted in writs of protection, expressing

the king's pleasure that the party should be quit of certain pleas and complaints for a certain period. *Volumus etiam quod idem W. interim sit quietus de omnibus placitis et querelis, exceptis, &c.* *Reg. Orig.* 22 b.

**VOLUNT.** L. Fr. [from Lat. *voluntas*, q. v.] In old English law. Will. *Per su volunt*; by his will. *T. Jon.* 107. *Fist son volunt*; made his will. 1 *And.* 3. *Bendl.* pl. 3.

**VOLUNTARIUS DÆMON.** L. Lat. A voluntary madman. A term applied by Lord Coke to a drunkard, who has voluntarily contracted madness by intoxication. *Co. Litt.* 247. 4 *Bl. Com.* 25.

**VOLUNTARY.** [Lat. *voluntarius*, from *voluntas*, will.] Free; without compulsion or solicitation; in accordance with the will, intent, consent or agreement of a party.

Without consideration; without valuable consideration; gratuitous. 1 *Kames' Equity*, pref. See *infra*.

**VOLUNTARY ASSIGNMENT.** An assignment made by a debtor in trust for the benefit of his creditors. So called in contradistinction from *compulsory* assignments, or such as are made under statutes of bankruptcy and insolvency, or by order of some competent court. See *Burrill on Assignments*, chap. 1, pp. 4, 5. And see 10 *Paige's R.* 445. 1 *Comstock's R.* 201. 3 *Sumner's R.* 345.

**VOLUNTARY CONVEYANCE.** A conveyance without valuable consideration, such as a deed or settlement in favor of a wife or children. The term is usually applied to conveyances made by parties who are indebted at the time of making them. See 2 *Kent's Com.* 440—443, and notes.

**VOLUNTARY DEPOSIT.** In the civil law of bailment. A deposit arising from the mere consent and agreement of parties, as distinguished from a necessary deposit, which was made upon some sudden emergency, or from some pressing necessity. *Dig.* 16. 3. 2. *Story on Bailm.* § 44.

**VOLUNTARY ESCAPE.** In practice. An escape of a person from custody, by the express consent of his keeper. 3 *Bl. Com.* 415. An escape in consequence of the sheriff, or his officer, permitting a party to go at large. 1 *Arch. Pr.* See *Escape*.

**VOLUNTARY JURISDICTION.** In English law. A jurisdiction exercised by certain ecclesiastical courts, in matters where there is no opposition. 3 *Bl. Com.* 66. The opposite of *contentious* jurisdiction, (q. v.) *Id. ibid.*

**VOLUNTARY MANSLAUGHTER.** In criminal law. Manslaughter committed voluntarily upon a sudden heat of the passions; as if, upon a sudden quarrel, two persons fight, and one of them kills the other. 4 *Bl. Com.* 190, 191.

**VOLUNTARY OATH.** In practice. An oath taken in some extra-judicial matter, or before some magistrate or officer who cannot compel it to be taken.\* 4 *Bl. Com.* 137.

**VOLUNTARY WASTE.** Waste done by acts of commission; as by pulling down a house.\* 2 *Bl. Com.* 281. It is distinguished from *permissive* waste, which is matter of omission only. *Id. ibid.*

**VOLUNTAS.** Lat. [from *volo*, *velle*, to will.] In civil and old English law. Will; intent; design; purpose. *Voluntas et propositum distinguunt maleficia.* Will and purpose characterize crimes. *Bract.* fol. 2 b, 136 b. *Crimen non contrahitur, nisi voluntas nocendi intercedat, [interveniatur.]* Crime is not contracted, unless the intention of doing harm be present. *Id. ibid.* *Fleta*, lib. 1, c. 31, § 4. *Tolle voluntatem, et erit omnis actus indifferens.* Take away will, and every act will become indifferent. *Bract.* fol. 2 b. *Voluntas in delictis, non exitus, spectatur.* The will, not the issue, is looked to in crimes. 2 *Inst.* 57. *Voluntas reputatur [reputabitur] pro facto.* The will is [shall be] taken for the deed. A maxim in the English law of treason. 3 *Inst.* 5, 69. *Broom's Max.* 145, 146, [228.]

Will; intention; desire. *Voluntas donatoris, in charta doni manifeste expressa, observetur.* The will or intention of a donor, clearly expressed in the deed of his gift, should be observed. *Co. Litt.* 21. *Voluntas testatoris est ambulatoria usque ad mortem, [ad extremum vitæ exitum.]* The will of a testator is ambulatory until death. 2 *Bl. Com.* 502. 4 *Co.* 61 b. Lord Loughborough observed that this was the most general maxim he knew of. 4 *Vesey, Jr.* 210. It seems to have been taken from that of the civil law: *Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum.* *Dig.* 34. 4. 4.

A will; a last will. *Voluntas testatoris habet interpretationem latam et benignam.* The will of a testator has [should have] a broad and benignant interpretation. *Jenk. Cent.* 260. See *Dig.* 50. 17. 12. *Voluntas ultima testatoris est perimplenda secundum veram intentionem suam.* The last

will of a testator is to be fulfilled according to his true intention. *Co. Litt.* 322.

Will; pleasure. *Ad voluntatem*; at will. *Bract.* fol. 27.

VOLUNTE, *Volunt*, *Volounte*. L. Fr. [from Lat. *voluntas*, q. v.] Will; mind; intention. *Britt.* c. 43, 77.

VOLUNTEER. A grantee in a voluntary conveyance; one to whom a conveyance is made without valuable consideration. A party, other than a wife or child, to whom, or for whose benefit, a voluntary conveyance is made. See 1 *White's Equity Cases*, 167—193.

VOMENTUM. L. Lat. In old Scotch law. A cannon. *Cum vomentis curriculum*; with pieces of ordnance mounted on wheeled carriages. 1 *Pitc. Cr. Trials*, part 1, p. 6.

VOUCH. [from L. Fr. *vocher*, *voucher*, from Lat. *vocare*, q. v.] In old practice. To call; to call to warranty; to call upon a person who has warranted a title (termed *warrantus*, or *warantus*, in the old books,) to defend the title which he so warranted.\* 2 *Bl. Com.* 358.

To cite, or quote. "*Vouched* a precedent of a case." *Yelv.* 96. "The book that hath been *vouched*." 1 *Leon.* 79.

VOUCHEE. [L. Fr. *voche*; L. Lat. *vocatus*.] In old practice. One who is vouched or called to warranty. 2 *Bl. Com.* 358. 3 *Id.* 300.

VOUCHER. [L. Fr. *vocher*; L. Lat. *vocatio*.] In old practice. A calling to warranty; a calling upon one who has warranted a title, to defend it in an action.\* The calling in of some person to answer an action, that has warranted the title to the tenant or the defendant. 3 *Bl. Com.* 300. See *Roscoe's Real Act.* 257—274.

The party who vouched, (*vocans*;) the tenant in a real action, who called upon another to defend his title. *Cowell*.

VOUCHER. In old English law. An account book wherein are entered the acquittances or warrants for the accountant's discharge. *Stat.* 19 *Car.* II. c. 1. *Cowell*.

Any acquittance or receipt, discharging a person, or being evidence of payment. *Jacob.* Shaw, C. J. 1 *Metcalfe's R.* 218.

VOUS AVES (or AVEZ.) L. Fr. You have. *Vous avez cy*; you have here. The old form of commencing a pleading when delivered *ore tenus*. *Vous avez cy John qui dit que*, &c.; you have here John who says that, &c. *Yearb.* H. 9 Edw. III.

6. \* *Vous avez icy Richard que avowa cest prise*; you have here Richard who avows this taking. P. 8 Edw. III. 19. M. 19 Hen. VI. 1.

The same form of expression was used on other occasions, "*Vous avez* Sir William Roberts." The answer of the crier to the clerk of the crown, when a juror was called in court. 7 *How. St. Trials*, 161.

VOUS VEIES, (VOIES, or VEITZ) BIEN COMENT. L. Fr. You see well how. Formal words anciently used by counsel in addressing the court. *Yearb.* T. 1 Edw. III. 9. H. 2 Edw. III. 9. P. 8 Edw. III. 23. M. 4 Hen. VI. 1.

VOX. L. Lat. In old practice. Speech; saying; statement. *Fleta*, lib. 2, c. 61, § 1; c. 63, § 9. *Vox emissa volat; litera scripta manet*. The spoken word flies; the written letter remains. *Broom's Max.* [517.]

VOX SIGNATA. L. Lat. In Scotch practice. An emphatic or essential word. 2 *Alis. Crim. Pr.* 280.

VOYAGE. [L. Fr. *viage*; L. Lat. *viaggiu*, *iter navis*.] In maritime law. The passage of a vessel upon the seas, either from one port to another, or to several ports.

VOYAGE INSURED. [Fr. *voyage assuré*; L. Lat. *viaggiu*.] In insurance law. A transit at sea from the *terminus à quo*, to the *terminus ad quem*, in a prescribed course of navigation, (*iter viagii*), which is never set out in any policy, but virtually forms parts of all policies, and is as binding on the parties thereto, as though it were minutely detailed. 1 *Arnould on Ins.* 333, (339, Perkins' ed.) This is a technical term, to be carefully distinguished from the actual voyage of the ship, (*iter navis*.) *Id.* See *Emerig. Tr. des Ass.* ch. 13, sect. 4, § 1. *Casaregis*, disc. 67, n. 31.

VOYAGE OF THE SHIP. [Lat. *iter navis*.] In insurance law. The course of navigation on and in which a vessel actually sails. 1 *Arnould on Ins.* 333, (340, Perkins' ed.) See *Voyage insured*.

VOYER. L. Fr. In old English law. To go; to issue. *A que le bref voye de la court*; to whom the writ goes [issues] from the court. *Britt.* c. 120.

VOYS. L. Fr. [from Lat. *vox*, voice.] In old English law. Voice; word; speech; saying; assertion. *Encontre sa soule voys*; against his single assertion. *Britt.* c. 29.

*Soulevoys*, (*simplex dictum, simplex loquela*, qq. v.) *Id.* c. 93.

VS. In practice. A very common contraction of *versus*, (against,) used in entitling papers on the part of a plaintiff; "A. B. *vs.* C. D." Sometimes still further abbreviated to *v.* It seems to have been immediately derived from the L. Fr. *vers*, and occurs as early as the time of Britton, in the entries of essoins on the record. *Johan v's Peres, d'play d' t'r, p'tel*, (*Johan v's Peres, de play de terre, par tiel*;) John *vs.* Peter, of a plea of land, by such a one. *Johan v's Peres, T. et S. de tel p'lee, par tel*; John *vs.* Peter, T. and S. of such a plea, by such a one. *Britt.* c. 123. And see the Year Books, *passim*.

VULGARIS OPINIO. Lat. Common opinion. *Vulgaris opinio est duplex, sc. opinio vulgaris orta inter graves et discretos, et quæ vultum veritatis habet, et opinio tantum orta inter leves et vulgares homines, absque specie veritatis*; common opinion is two-fold, viz. common opinion which originates among grave and discreet men, and which has a countenance of truth, and an opinion which originates only among light and vulgar men, without a show of truth. 4 Co. 107 b. *Adams' & Lambert's case*.

VULGARIS PURGATIO. L. Lat. In old English law. Common purgation; a name given to the trial by *ordeal*, to distinguish it from the canonical purgation, which was by the oath of the party. 4 Bl. Com. 342.

VULGO CONCEPTI. Lat. In the civil law. Spurious children; bastards; those who cannot point out their father, or if they can, have him for a father whom it is not lawful to have; (*qui patrem demonstrare non possunt, vel qui possunt quidem, sed eum habent quem habere non licet*.) *Dig.* 1. 5. 23.

VULGO QUÆSITI. Lat. In the civil law. Spurious children; literally, gotten from the people; the offspring of promiscuous cohabitation, who are considered as having no father. *Inst.* 3. 4. 3. *Id.* 3. 5. 4.

VYCINE. L. Fr. [Lat. *vicinus*.] A neighbor. *Dyer*, 36 b, (Fr. ed.)

## W.

WACREOUR. L. Fr. In old English law. A vagabond, or vagrant. *De wacreours per pays.* *Britt.* c. 29.

WACTA. L. Lat. [from Germ. *waht*, Sax. *wacean*, Fr. *guet*, q. v.] In old European law. Watch; watch and ward, (*excubiæ*.) *Excubias, quas usitato vocabulo wactas dicunt, facere non negligant*; they shall not neglect to perform watches, which in the common language they call *wacts*. *Capitul. Hludov. Pii*, A. D. 815, c. 1. *Esprit des Lois*, liv. 30, c. 13, and note. *Spelman*. 1 Bl. Com. 356. *Capitul. Caroli*, lib. 3, c. 68.

WADIA, *Guadia*. L. Lat. In old European law. Gage; pledge. *Si non habuerit unde summam persolvat, semetipsum per guadium in servitio principis tradet*; if he have not wherewith to pay the sum, he shall deliver himself up by pledge to the service of the prince. *LL. Longob.* lib. 1, tit. 15.

WADIARE. L. Lat. In old European law. To pledge. *Spelman*.

WADIUS, *Wadium*. L. Lat. In old European law. A pledge. *Spelman*.

WADRUS. L. Lat. In old European law. A term of frequent occurrence in the *Formulae Solennes*, which *Spelman* supposes to mean *water*. *Do, trado, &c. N. N. &c. mansos tantos, cum domibus, ædificiis, curtiferis, cum wadris, sylvis, terris arabilibus, &c.* (I give, deliver, &c. to N. N. &c. so many manses, with the houses, buildings, curtilages, with the waters, woods, arable lands, &c.) *Form. Sol.* 18, 19, 20, 50, 58.

WADSET. [from *wad, wadia*, a pledge.] In Scotch law. A disposition of lands, answering to a mortgage in English law. 1 *Kames' Equity*, pref. Literally, a setting or putting to pledge; a close translation of the L. Lat. *in vadum* (or *wadium*) *positio*.\*—A right by which lands, or other heritable subjects, are impignorated by the proprietor to his creditor, in security of his debt. The debtor who grants the *wadset*, and has the right of reversion, is called the *reverser*; and the creditor receiver of the *wadset*, is called the *wadsetter*. *Ersk. Pr.* b. 2, tit. 8, § 1.—A disposition whereby any real right of lands or other things passing by infestment, is transmitted from one to another, in security of a special sum, and redeemable upon payment of the money in the way and manner therein expressed. 1 *Forbes' Inst.* part 3, p. 12.

WADSETTER. In Scotch law. A creditor to whom a *wadset* is granted; a mortgagee. *Ersk. Pr.* b. 2, tit. 8, § 1.

WAFTORES. L. Lat. In old English

law. A name given to certain naval officers, appointed 22 Edw. IV. chiefly to protect the fishermen on the coast of Norfolk and Suffolk. *Cowell*.

WAGA, *Vaga*. L. Lat. In old English law. A weigh; a measure of cheese, salt, wool, &c. containing two hundred and fifty-six pounds avoirdupois. *Cowell*. 1 *Mon. Ang.* 515. *Spelman. De una waga casei. Fleta*, lib. 2, c. 76, § 12.

WAGE. [from L. Fr. *gager*; L. Lat. *vadiare, wadiare, guadiare*.] In old English practice. To give security for the performance of a thing. *Cowell*. To wage battel, was to give gage or security for joining in the *duellum* or combat. See *Wager of battel*. To wage law, was to give gage or security to make one's law. See *Wager of law*.

WAGE. L. Fr. In old English law. Gage; pledge, (*vadium*.) *LL. Gul. Conq.* l. 6.

WAGER. A contract by which two parties or more agree that a certain sum of money or other thing, shall be paid or delivered to one of them, on the happening or not happening of an uncertain event. *Bouvier*. Wagers are founded either upon a fact already in existence, but not known to the parties, the one affirming that it is so, and the other that it is not; or upon some future event, the one affirming that it will be so, the other that it will not.

In New-York, all wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, are declared by statute to be unlawful; and all contracts for or on account of any money or property, or thing in action so wagered, bet or staked, are declared void. 1 *Rev. St.* [662,] 666, § 8. In Vermont and Pennsylvania, no action upon any wager or bet will be sustained. 2 *Vermont R.* 144. 6 *Wharton's R.* 173. 3 *Kent's Com.* 178, and note. At common law, however, a wager is considered to be a legal contract, which the courts are bound to enforce, unless it be on a subject which is illegal, or contrary to public policy, good morals, or the peace of society, or which affects the feelings or interests of third persons. *Story on Contracts*, § 566. *Chitty on Contracts*, 494—498. 3 *Kent's Com.* 277.

WAGER OF BATTEL. [L. Fr. *gager de bataille*; L. Lat. *vadiatio duelli*.] In old English practice. The giving of a gage

or pledge to try a cause by battel, or single combat. This *gage* or *vadium* was originally an actual security given by both the parties; the appellee (in proceedings by appeal) giving *gage* to defend himself by his body, and the appellor giving *gage* to make good his charge in the same manner. *Dat appellatus vadium defendendi, et appellator vadium disrationandi. Bract.* fol. 137. *Done le defendaunt gage à soy defendre, et le appellour gage pur la cause dereiner. Britt.* c. 22. In writs of right, and other cases where the combat was by champions, the giving of gage was expressed by the mere formality of the tenant's champion throwing down his glove or gauntlet, which the demandant's champion took up. 3 *Bl. Com.* 339.

WAGER OF LAW. [L. Fr. *gager de ley, ley gager*; L. Lat. *vadiatio legis*.] In old practice. The giving of *gage* or sureties by a defendant in an action of debt, that at a certain day assigned, he would make his law; that is, would take an oath in open court, that he did not owe the debt, and at the same time bring with him eleven neighbors, (called *compurgators*,) who should avow upon their oaths that they believed in their consciences that he said the truth. *Glanv.* lib. 1, c. 9, 12. *Bract.* fol. 156 b. *Britt.* c. 27. *Fleta*, lib. 2, c. 47, § 5. 2 *Bl. Com.* 343. *Cro. Eliz.* 818. The sureties having been given, the defendant, on the day assigned, appeared in court with his compurgators, and standing at the end of the bar, was admonished by the judges of the nature and danger of a false oath. If he still persisted, he was to repeat this or the like oath: "Hear this, ye justices, that I do not owe unto Richard Jones the sum of ten pounds, nor any penny thereof, in manuer and form as the said Richard hath declared against me. So help me God." The oaths of the compurgators then immediately followed. See *Compurgator*.

The whole proceeding is more minutely described in 2 *Salk.* 682, as follows: "Action of debt was brought on a by-law; the defendant waged his law, and a day was given upon the roll for him to come and make his law; and now, upon the last day of the term, he came. And Northby for the plaintiff insisted, that if he swear falsely or rashly and without reason, the court is not bound to receive him to it, and prayed a day to speak to that point. Sed per Holt, C. J. we can admonish him;

but if he will stand by his law, we cannot hinder it, seeing it is a method the law allows. And the defendant was set at the right corner of the bar, without the bar, and the secondary asked him, if he was ready to wage his law; he answered 'Yes.' Then he laid his hand upon the book, and then the plaintiff was called; and a question thereupon arose whether the plaintiff was demandable. [The court held that he was.] Then the court admonished him [the defendant,] and also his compurgators, which they regarded not so much as to desist from it. Accordingly the defendant was sworn, that he owed not the money *modo et forma*, as the plaintiff had declared, nor any penny thereof. Then his compurgators standing behind him were called over, and each held up his right hand, and then laid their hands upon the book, and swore that they believed what the defendant swore was true."

This formality of acquitting one's self of a claim by oath, was properly and technically called "*making law*" or "*perfecting law*;" the word "*law*" being used in its ancient sense of *oath*. See *Law*. Lord Coke, however, supposes the term to mean, "taking the benefit which the law allowed the party." *Co. Litt.* 295. *Wager of law* strictly signified merely the preliminary formality of giving gage or security, but (probably in consequence of the ambiguous character of the expression, "*making law*") is generally used in the books, to denote the whole proceeding. 3 *Bl. Com.* 341—348. See *Fleta*, lib. 2, c. 47, § 5.

*Wager of law* was one of the most ancient proceedings in English practice. It is distinctly described in Glanville, (*ub. sup.*) and was probably introduced by the Saxons. Montesquieu mentions it, under the name of the custom of negative proofs, (*l'usage des preuves négatives*), as permitted by the laws of the Riparian Franks, and of the Allemans, Bavarians, Thuringians, Frisians, Saxons, Lombards and Burgundians. *Esprit des Lois*, liv. 28, c. 13. The last instance of its use in the English courts appears to have been in the case of *King v. Williams*, 2 *B. & C.* 538. It was abolished as late as the statute 2 & 4 Will. IV. c. 42, § 13. In the United States it seems never to have been practiced, but if it ever existed, it is now completely abolished. 8 *Wheaton's R.* 642.

**WAGER POLICY.** In insurance law.

A policy without any real interest to support it; a policy in which the insured has no interest, being in fact nothing more than a wager or bet between the parties, whether such a voyage would be performed, or such a ship arrive safe.\* 3 *Kent's Com.* 277, 278. A mere hope or expectation, without some interest in the subject matter, is a wager policy. *Id.* 275. Mr. Arnould defines a wager policy to be "one in which the parties, by express terms, disclaim, on the face of it, the intention of making a contract of indemnity." 1 *Arn. on Ins.* 276, (281, Perkins' ed.) Policies of this kind are now generally held to be illegal. *Id.* 285, (289.) 1 *Duer on Ins.* 93—95. *Id.* 154, 155.

**WAGES.** In maritime law. The compensation allowed to seamen for their services on board a vessel during a voyage.\* 3 *Kent's Com.* 185, *et seq.* See *Abbott on Shipp.* [605,] 715, *et seq.*

**WAI**, *Waife*, *Wayf*, *Wayfe*, *Weyfe*. [L. Fr. *weif*, *wef*; L. Lat. *wayvium*, *waivium*, *weyvium*, *weivium*.] In English law. A thing stolen, which is thrown away, (or *waived*), by the thief in his flight, for fear of being apprehended. 1 *Bl. Com.* 296. 2 *Kent's Com.* 358. Goods *waived* are such as a thief having feloniously stolen, and being newly followed with hue and cry, or else overcharged with the burden or trouble of the goods, for his own ease, and more speedy flight, flies away and leaves the goods behind him. *Cowell*. Bracton (who is copied by Fleta) briefly defines a *waif* to be that which no one claims; (*est wayvium quod nullus advocat.*) *Bract.* fol. 125 b. *Fleta*, lib. 1, c. 27, § 13.

All goods waived are forfeited to the crown; but they may belong to a subject by special grant or prescription. 1 *Bl. Com.* 296. 1 *Crabb's Real Prop.* 520, §§ 673, 674. In American law, a similar right may be considered as belonging to the state as against the finder, though it is never exercised. 2 *Kent's Com.* 358.

**WAINABLE.** In old records. That may be ploughed or manured; tillable. *Cowell*. *Blount*.

**WAINAGE.** In old English law. The team and instruments of husbandry with which a villein or agricultural bondman performed his services.\* 4 *Bl. Com.* 379. See *Wainagium*.

**WAINAGIUM**, *Wanagium*, *Waynagium*. L. Lat. [from Sax. *wæn*, a wain,

or wagon.] In old English law. Wainage; the furniture or appurtenances of a wain, with which a villein performed his services. *Et villanus alterius quam noster, eodem modo amerciat, salvo wainagio suo*; and any other's villein than ours shall be amerced in the same way, saving his wainage. *Magna Charta*, c. 14. It answered to the *contenementum* of a freeman. *Id. ibid.* 2 *Inst.* 28. *Barringt. Obs. Stat.* 12. See *Contenementum*.

WAITING, *Waitinge*. In old English law. A species of service. *Yearb.* P. 10 *Edw. III.* 41.

WAIVE. [L. Lat. *waviare*, *waivare*, *wayviare*, *weyviare*.] To throw away from one; to throw aside, as a thief does the thing he has stolen, in his flight; to give up that of which one has the possession; to abandon; to relinquish voluntarily; to relinquish a right which one may enforce if he chooses. In practice, a party is said to *waive* a default, to *waive* a right, or any advantage he may have regularly gained over his adversary. See *Waiver*.

In old English law. To forsake; to desert; to abandon. A man was said to *waive* the company of thieves. *Staundf. Pl. Cor.* fol. 26. The term was applied to a woman, in the same sense as *outlaw* to a man. A woman could not be *outlawed*, in the proper sense of the word, because, according to Bracton, she was never *in law*, that is, in a frank-pledge or decenary; but she might be *waived*, and held as abandoned. (*Femina utlagari non potest, quia ipsa non est sub lege*, i. *Inlaughe*, Anglice, s. *in franco plegio sive decenna*,—*wayviari tamen bene potest, et pro derelicta haberi*.) *Bract.* fol. 125 b. See *Fleta*, lib. 1, c. 27, § 12.

WAIVER. In practice, and pleading. A throwing aside; abandonment or relinquishment; a passing by, or passing over; the express relinquishment of a right or advantage, which one may enforce or insist upon, if he pleases; the implied relinquishment of a right or advantage, by neglecting to enforce it, or act upon it, in proper time or manner. Errors and irregularities are often cured by *waiver*, which in many cases is *implied* from the acts of a party. If a party, being aware of an irregularity in the other's proceedings, overlook it, and take subsequent steps in the cause, or where, after being fully put on inquiry, he neglect to inform himself of the irregularity, it is a *waiver*

of the irregularity, and he cannot afterwards take advantage of it. 1 *Burr. Pr.* 474. See *Broom's Max.* 59, 60, [101—103.]

WAIVIARE, *Wayviare*, *Weyviare*. L. Lat. [from Lomb. *wifare*, *huifare*, or *guifare*, according to Spelman.] In old English law. To waive; to throw away; to forsake, or abandon; to hold as derelict. *Spelman*.

To waive; to outlaw a woman. *Reg. Orig.* 276 b, 277. *Fleta*, lib. 1, c. 27, §§ 12, 13.

WAIVIARIA. L. Lat. [from *waivare*, q. v.] In old English practice. The waiving of a woman; a proceeding answering to the outlawry of a man; *waivary*.\* *Utlagaria et waviaria*. *Reg. Orig.* 132 b, 133.

WAIVIUM. L. Lat. In old English law. Waif; a waif. See *Wayvium*.

WAKENING. In Scotch law. The revival of an action. A process by which an action that has lain over and not been insisted in for a year and a day, and thus technically said to have "fallen asleep," is awakened, or put in motion again; or, in the quaint language of Forbes, "is roused and set a going." 1 *Forbes' Inst.* part 4, p. 170. *Ersk. Pr.* b. 4, tit. 1, § 33. *Bell's Dict.*

WALAPAUZ. Lomb. In old Lombardic law. The disguising the head or face, with the intent of committing a theft. *LL. Longobard.* tit. 15, cap. ult. Lindenberg derives it from the Germ. *walu*, head, and *pausen*, to paint.

WALDA. L. Lat. [from Germ. *wald*; Sax. *weald*.] In old records. A wood, or wild woody ground. *Chartul. Abbat. Glaston.* MS. fol. 67 a. *Cowell*.

WALENSIS. L. Lat. In old English law. A Welshman. *Mag. Cart. Johan.* c. 56.

WALISCUS. L. Lat. [from Sax. *wealh*, a foreigner or stranger.] In Saxon law. A servant, or any ministerial officer. *LL. Inæ*, c. 34. *Cowell*.

WALL is distinguished by Callis from a bank; "for a bank is made *ex solo et fundo quæ ex suis propriis naturis sunt eadem cum terra super qua edificatur* (out of soil and ground, which, of their own natures, are the same with the land upon which it is built;) but so is not a wall, for it is an artificial edifice, not of the materials arising of the place where it standeth, but which be brought thither

and built there." *Callis on Sewers*, [74,] 92.

WALLA, *Wallia*. L. Lat. [from Sax. *wal*; Lat. *vallum*.] In old English law. A bank of earth cast up for a mound, or boundary; a wall; a sea-wall. 2 *Mon. Angl.* 920. *Cowell. Spelman*, voc. *Wallia*.

WALLARE. L. Lat. In old English law. To repair or keep up a wall. *Somer's Gavelk.* 181.

To wall or enclose. *Wallatur fossato vel haiâ*; it is enclosed with a ditch or with a hedge. *Fleta*, lib. 5, c. 9, § 16.

WALLESHERIA. L. Lat. In old English law. Waleschery; the fact of being a Welshman. *Stat. Walliæ*, 12 *Edw. I. c. 4.* 2 *Reeves' Hist.* 96. Answering to *Englescheria*, in case of an Englishman. See *Englecery*.

WALLIA. L. Lat. In old English law. A wall; a sea-wall; a mound, bank or wall erected in marshy districts as a protection against the sea. *Spelman. Questus est nobis A. quod B. quasdam wallias apud N. pro salvatione terrarum ibidem adjacentium contra fluxus et refluxus maris erectas, fregit*; A. hath complained to us that B. hath broken down certain walls erected at N. for the protection of the lands lying in that neighborhood, against the flowings and ebblings of the sea. *Reg. Orig.* 93.

WALLIA. L. Lat. In old English law. Wales. *Mag. Cart. Johan.* c. 56.

WALLIÆ STATUTUM. L. Lat. The Statute of Wales. 2 *Reeves' Hist.* 93. 1 *Chitt. Bl. Com.* 94. See *Statutum Walliæ*.

WALLICUS. L. Lat. Welsh. *Homines Wallici*; Welshmen. 1 *Leon.* 31. *Wallican loquentes linguam*; speaking the Welsh tongue.

WAMPUM. In American law. Indian money or currency, called by the New-York Dutch, *seewan*, and *wampum* by the English. This continued to constitute the common currency of the country long after it ceased to belong to the Dutch. In 1693, the ferriage for each single person from New-York to Brooklyn was eight styvers in wampum, or a silver two-pence. *O'Callaghan's New-Neth.* vol. i. pp. 60, 61, and note.

WAND OF PEACE. In Scotch law. A wand or staff carried by the messenger of a court, and which, when deforced, (that is, hindered from executing process) he breaks, as a symbol of the deforcement, and protest for remedy of law. 2 *Forbes' Inst.* 207.

VOL. II.

WANG. Sax. In old English law. A field. *Blount*.

The check or jaw wherein the teeth are set. "Hence with Chaucer," says Blount, "we call the cheek-teeth or grinders *wangs* and *wang-teeth*, which is also notified in that old way of sealing writings:

And in witness that this is sooth,  
I bite the wax with my *wang-tooth*."

WANNAGIUM. L. Lat. A word occurring in Hoveden's Annals, which Spelman gives, but without definition. The following expressions would seem to denote it to be a quantity of land allotted to the working of one plough. *Quot carucarum wannagia fuerint in singulis villis, &c. Ad uniuscujusque carucæ wannagium centum acras terræ.* (How many wannages of ploughs there were in every vill, &c. For the wannage of every plough, one hundred acres of land.) *Hoved. Ann.* pars post. fol. 443, num. 30. It seems to be only another form of *wainagium*, (q. v.)

WAPENTAKE. [from Sax. *wæpen*, weapons, and *tac*, touch, or take; L. Lat. *wapentakium*, *wapentachium*.] In English law. A division of a county in the north part of England, (viz. in the counties of Yorkshire, Lincolnshire, Nottinghamshire, Leicestershire, and Northamptonshire) corresponding with a hundred. *Lamb. Ex-plic. voc. Centuria. Cowell. LL. Edw. Conf.* c. 33, cited *ibid. Fleta*, lib. 2, c. 61, § 21. 1 *Bl. Com.* 115. *Qui convenire faciunt hundreda, sive wapentachia. Bract.* fol. 116 b. *Per hundreda [sive] wapentakya. Id.* fol. 155.

A hundred court, or hundred-gemote. *Crabb's Hist.* 27. The term seems to be still in use. 1 *Steph. Com.* 117.

\* \* Hoveden derives this word from the Sax. *wæpen*, and *tac*, (Lat. *tactus armorum*) literally, *weapon-touch*, an ancient ceremony performed in the hundred, and which he describes in the following words: *Cum quis accipiebat præfecturam wapentachii, die statuto, in loco ubi consueverunt congregari, omnes majores contra eum conveniebant, et descendente de equo suo, omnes assurgebant ei. Ipse vero erectâ lanceâ suâ, ab omnibus secundum morem fædus accipiebat: omnes enim, quotquot venissent, cum lanceis suis hastam tangebant, et ita confirmabant per contactum armorum, &c., &c.* (When any one received the appointment of chief of a wapentake, on a day appointed, all the principal men came together to meet him, in the place where they usually

assembled, and as he alighted from his horse, all rose up before him. The chief then, raising his lance, received fealty from them all, according to custom; for all who were present *touched* his lance with theirs, and thus, by the *touch* of their *weapons*, expressed their submission to his authority.) *Hoved. Ann.* apud *Cowell*. The same ceremony is described by *Fleta* in nearly the same words. *Fleta*, lib. 2, c. 61, §§ 21, 22. This ceremony seems to have been derived from the use made of the spear or *framea* by the ancient Germans, in their popular assemblies, as described by *Tacitus*. *De Mor. Germ.* c. 11. *Spelman*. *Ranulph* of Chester, however, explains *wapentake* to mean a *taking of weapons*, observing, that as often as there was a new lord of a hundred, the vassals gave up their arms to him in token of subjection; (*quoties novus esset hundredi dominus, ei in subjectionis signum, arma redderent vassalli*.) *Ranulph Cestr.* lib. 1, c. 5, apud *Cowell*. And *Sir Thomas Smith*, (*De Repub. Anglor.* lib. 2, c. 16,) says that anciently musters were taken of the armor and weapons of the several inhabitants of every several wapentake, and from those that could not find sufficient pledges for their good abearing, their *weapons* were *taken away* and given to others. *Cowell*. See *Fortescue de L. L. Angliæ*, c. 24, note.

WAR. [Lat. *bellum*; Fr. *guerre*; L. Lat. *guerra*, *werra*.] A state of forcible contention; an armed contest between nations; a state of hostility between one or more nations or states. *Grotius de Jur. Bell.* lib. 1, c. 1. See *Bellum*.

WARA. L. Lat. In old records. A quantity or measure of ground. *Concedimus*—*waram et dimidiam, cum cotlandis et insuper medietatem totius nemoris*; we have granted a [ware] and a half, with the cotlands, and a moiety of the whole wood besides. 2 *Mon. Ang.* 128. *Cowell*.

WARACTUM. L. Lat. In old English law. Fallow; fallow-ground. *Quando tenementum jacet incultum et ad waractum*; when the tenement lies untilled, and at fallow. *Bract.* fol. 228 b. See *Warectum*.

WARRANTIA. L. Lat. In old English law. Warranty; guaranty. *Spelman* gives the word in this form, which is used in *Fleta*, but in *Bracton* and the *Register* it is written *warrantia*, (q. v.)

WARRANTIZARE. L. Lat. In old English law. To warrant. *Fleta*, lib. 5, c. 4, § 1. *Warrantizare nihil aliud est quam te-*

*nentem vocantem defendere in sua seisinâ vel possessione erga petentem*; to warrant is nothing else than to defend a tenant, vouching in his seisin or possession, against the demandant. *Id.* lib. 6, c. 23, § 2.

WARRANTIZATIO. L. Lat. In old English law. Warranty. *Fleta*, lib. 5, c. 4, § 5.

WARRANTIZO. L. Lat. In old English law. I warrant. *Fleta*, lib. 5, c. 4, § 4.

WARRANTUS, *Warrantus*. L. Lat. [L. Fr. *garaunt*.] In old English law. One who had covenanted to warrant another's title, and who might, therefore, be called upon, or vouched to warrant and defend it; a warrantor. *Habet forte tenens warantum et defensorem, qui eum defendere tenetur in seysina sua contra petentem*; the tenant perhaps has a warrantor and defender, who is bound to defend him in his seisin against the demandant. *Bract.* fol. 257 b. *Fleta*, lib. 5, c. 4, § 1. *Quis posset warrantum vocare*; who may vouch a warrantor. *Bract.* fol. 380 b. *Quis vocari possit ad warrantum*; who may be vouched to warranty. *Id. ibid.* Called, in *Britton*, *garaunt*, and *garaunt voche*. *Britt.* c. 75.

WARD. [from L. Fr. *gard*, *garde*, from *garder*, to guard or keep; L. Lat. *warda*; Lat. *custodia*.] In old English law. Guard; protection; defence; the duty of guarding a place. 1 *Bl. Com.* 356. See *Watch and ward*.

The state of being under protection or guardianship. An heir under age was said to be *in ward*. 2 *Bl. Com.* 67.

An infant under guardianship. *Stat.* 32 *Hen. VIII.* c. 46. Lord Hale uses the civil law term *pupil*. *Anal.* sect. xx.

A place under the protection of a person; a division of a city, under the charge of an alderman. *Stow. Cowell*. A division of a forest. *Manwood*, part 1, p. 97. *Spelman*.

A place of custody or confinement; a prison, (*carcer*.) *Spelman*.

A state of confinement; imprisonment, (*incarceratio*.) *Id.*

WARD. In modern law. A person under the charge or care of a guardian; a minor under guardianship. 1 *Bl. Com.* 463.

A division of a city, under the charge of an alderman. See *Ward*, *supra*.

WARD-CORN. [Fr. *corn*, *horn*.] In old English law. The duty of keeping watch and *ward*, with a *horn* to blow upon

any occasion of surprise. 1 *Mon. Angl.* 976.

WARD-FEEH, *Ward-feoh*. Sax. In old records. Ward-fee; the value of a ward, or the money paid to the lord for his redemption from wardship. *Blount*.

WARD-HOLDING. In old Scotch law. Tenure by military service; the proper feudal tenure of Scotland. Abolished by statute 20 Geo. II. c. 50. *Ersk. Pr. b. 2, tit. 4, § 1*. So called from the incident of ward or wardship belonging to it. See 1 *Forbes' Inst.* part 2, p. 97. *Bell's Dict.*

WARD-MOTE. [L. Lat. *wardemotus*, from *ward*, and Sax. *mote*, or *gemote*, a meeting.] In English law. A court kept in every ward in London, commonly called the *ward-mote-court*, or *inquest*. *Cowell*. 4 *Inst.* 249. 2 *Show.* 525.

WARD-PENNY, *Warth-penny*, *Warpen*. In old English law. Money paid to the sheriff or castellains, for the duty of watching and warding a castle. *Spelman. Chart. Gul. Cong. Eccles. S. Martini de Bello*.

WARD-STAFF. In old records. A constable's or watchman's staff. *Cowell*.

WARD-WIT, *Wardwyte*, *Warwite*. In old English law. Immunity or exemption from the duty or service of ward, or from contributing to such service. *Spelman*. Exemption from amercement for not finding a man to do ward. *Fleta*, lib. 1, c. 47, § 16. *Co. Litt.* 83.

WARDA. L. Lat. In old English law. Ward; guard; protection; keeping; custody, (*tutela, custodia*.) *Spelman*.

A ward; an infant under wardship. *Id.*

WARDA, *Varda*. L. Lat. In old Scotch law. An award; the judgment of a court. In *wardis et judiciis petitis*; in awards and judgments prayed for. *Quon. Attach. c. 34, § penult. Id. c. 35, §§ 1, 2. Spelman*.

WARDARE, *Vardare*. L. Lat. In old Scotch law. To award; to decree or adjudge; to pronounce judgment. *Spelman*, quoting *Skene*.

WARDEGEMOT. [from *ward*, and Sax. *gemote*, meeting.] In Saxon law. The meeting of a ward, or the inhabitants of a ward; a court held in, or for a ward. *Spelman*, voc. *Gemotum*. See *Wardmote*.

WARDEN. [L. Fr. *gardein*; Lat. *custos*; L. Lat. *guardianus*.] In English law. One who has the keeping or charge of any person or thing, by office; a keeper. Various officers under this name are mentioned in old statutes; as *Warden* of the

marshes, *Warden* of the forest, *Wardens* of the rolls in the chancery, *Warden* or clerk of the hanaper in chancery, *Warden* of the stannaries, *Warden* of the Cinque Ports, *Warden* of the Fleet. *Cowell*.

WARDEN OF THE CINQUE PORTS. [L. Lat. *guardianus quinque portuum*.] In English law. The title of the governor or presiding officer of the Cinque Ports. Camden supposes this office to have been created in imitation of the policy of the Romans, who appointed a magistrate or governor over the eastern parts of England, for the special protection of the seacoast against invasion. *Camd. Brit.* 238. See *Cinque Ports*.

WARDS AND LIVERIES. In English law. The title of a court of record, established in the reign of Henry VIII. See *Court of Wards and Liveries*.

WARDSHIP. [L. Fr. *garde*; Lat. *custodia*.] In feudal and old English law. Guardianship; the right of acting as guardian to the heir of a tenant by knight-service.\* This wardship consisted in having the custody of the body and lands of the heir, without any account of the profits, till the age of twenty-one in males, and sixteen in females. 2 *Bl. Com.* 67. *Britt.* c. 66.

WARE, *Wair*. O. Sc. [from O. Fr. *varech*.] In old Scotch charters. Seaweed, or that which is thrown up by the sea. *Spelman*.

WARECTARE. L. Lat. In old English law. To fallow ground; or plough up land (designed for wheat) in the spring, in order to let it lie fallow for the better improvement. *Cowell. Ad warectandum.* 1 *Mon. Angl.* 525. *Warectandi tempus.* *Fleta*, lib. 2, c. 73, § 10.

WARECT. L. Fr. In old English law. Fallow. *Gist warect*; lies fallow. *Yearb.* P. 11 Hen. VI. 9.

WARECTUM, *Waractum*, *Wareccum*. L. Lat. In old English law. Fallow ground; land that has been neglected and long untilled. *Fleta*, lib. 2, c. 72, § 5; c. 73, § 12. 2 *Mon. Angl.* 253. *Cowell. Co. Litt.* 5 b. Bracton writes this word, *waractum*, (q. v.)

WARENDA. L. Lat. In old European law. Warranty; a word of frequent occurrence in the Mirror of Saxony, corresponding to the *warantia*, or *warrantia* of old English law. *Spelman*, voc. *Warrantia*.

WARENNA. L. Lat. In old English law. Warren; a warren. *Spelman. Li-*

*bera warennna*; free warren, (q. v.) *Quare vi et armis liberam warennam ipsius A. apud N. intravit, et in ea, sine licentia et voluntate sua, fugavit et lepores, cuniculos, phasianos et perdices cepit et asportavit, &c.*; wherefore, with force and arms, he entered the free warren of the said A. at N. and therein, without his license and consent, chased, took and carried away hares, conies, pheasants and partridges, &c. *Reg. Orig.* 93 b.

**WARENTARE.** L. Lat. [Lomb. *guarentare*.] In old European law. To warrant. *Spelman*.

**WARENTIZARE.** L. Lat. [Lomb. *guarentizare*.] In old English law. To warrant; to save one harmless. *Spelman*. The more common form was *warrantizare*, (q. v.)

**WARGUS.** L. Lat. In old European law. An outcast; an exile; a banished person. *Si quis corpus jam sepultum effoderit vel exspoliaverit, wargus sit; hoc est, expulsus de eodem pago, usque dum cum parentibus defuncti conveniret*; if any one shall disinter or rob a body that has been buried, he shall be *wargus*, that is, driven out of the country, until he shall make satisfaction for the offence to the relatives of the deceased. *L. Salic.* tit. 57, § 5. *L. Ripuar.* tit. 85, § 2. *LL. Hen. I.* c. 84. *Spelman*.

**WARNIAMENTUM.** L. Lat. [L. Fr. *garnement*.] In old records. A garment. *Chartul. Radinges, MS.* fol. 63, apud *Cowell*.

**WARNISTURA.** L. Lat. In old records. Garniture; furniture; provision. *Pat. 9 Hen. III.* *Cowell*.

**WARNOTH.** In old English law. An ancient custom, whereby, if any tenant holding of the Castle of Dover, failed in paying his rent at the day, he should forfeit double, and for the second failure, treble, &c. *Cowell*.

**WARRANTICE.** In Scotch law. Warranty; a clause in a charter or deed by which the grantor obliges himself that the right conveyed shall be effectual to the receiver. *Ersk. Pr.* b. 2, tit. 3, § 11. A clause whereby the grantor of a charter obligeth himself to warrant or make good the thing granted to the receiver. 1 *Forbes' Inst.* part 2, p. 113.

A *warrantice contra omnes mortales* (against all mortals, or, as it is singularly translated, *against all deadly*), or in other words an absolute *warrantice*, is one where-

by the right is warranted against all legal defects in it, which may carry it off from the receiver, either wholly or in part. *Id. ibid.* 1 *Forbes' Inst. ub. sup.*

**WARRANT.** [from O. Fr. *guarent*; Lomb. *warens*.] In practice. An authority to do some judicial act; a power derived from a court, to take some person or property. A process under seal, issued by some court or justice, authorizing the officer to whom it is directed to arrest or apprehend a person named, or to take certain property.\* A warrant is said to imply a seal, in all cases where a seal has not been dispensed with by statute. *Bronson, J.* 3 *Hill's (N. Y.) R.* 497.

An authority to do some act in court, for another; as to sue, to appear and defend a suit; to confess a judgment, &c. See *Warrant of attorney*, *Warrant to sue and defend*.

To **WARRANT.** [L. Lat. *warentare*, *guarentare*, *warentisare*, *guarentisare*, *warrantizare*; L. Fr. *garaunter*.] In conveyancing. To assure the title to property sold, by an express covenant to that effect in the deed of conveyance. To bind one's self by a covenant in a deed, to defend the grantee in his title and possession. To stipulate by an express covenant that the title of a grantee shall be good, and his possession undisturbed. See *Warranty*.

In contracts. To engage, or stipulate in writing, or by words, that a certain fact in relation to the subject of the contract is or shall be as represented; as, in the contract of sale, that the thing sold is free from defect, or shall prove to be of the quality or quantity represented; in a policy of insurance, that a thing insured is neutral property, or that a ship shall sail on or before a certain day, &c. See *Warranty*.

**WARRANT OF ATTORNEY.** In practice. A written authority, directed to any attorney or attorneys of any court of record, to appear for the party executing it, and receive a declaration for him in an action at the suit of a person named, and thereupon to confess the same, or to suffer judgment to pass by default; and it also usually contains a release of errors. 2 *Burr. Pr.* 239.

Warrants of attorney to confess judgment are most commonly given where it is intended to secure a debt by giving to it the form of a judgment, without the necessity of an actual suit for the purpose. In these cases, they are accompanied by a

*bond* in a penalty double the amount due, or intended to be secured, conditioned to pay the amount due on demand, or as the parties may agree, and to this description of bonds the common warrants of attorney are adapted. 1 *Id.* 367.

#### WARRANT TO SUE AND DEFEND.

In old practice. A special warrant from the crown, authorizing a party to appoint an attorney to sue or defend for him. *Gill. C. P.* 32. 3 *Bl. Com.* 25.

A special authority given by a party to his attorney, to commence a suit, or to appear and defend a suit, in his behalf. These warrants are now disused, though formal entries of them upon the record were long retained in practice. See 1 *Burr. Pr.* 39.

WARRANTIA, *Warantia*. L. Lat. In old practice. Warranty. *Bract.* lib. 5, tract. 4.

WARRANTIA CHARTÆ. L. Lat. In old practice. Warranty of charter. A writ which lay for one who being enfeoffed of lands or tenements, with a clause of warranty, was afterwards impleaded in an assise or other action in which he could not vouch to warranty. In such case, it might be brought against the warrantor, to compel him to assist the tenant with a good plea or defence, or else to render damages and the value of the land, if recovered against the tenant. *Cowell.* 3 *Bl. Com.* 300. See *De Warrantia Chartæ*.

*Warrantia chartæ* was, in other words, an action brought to take advantage of a warranty, in lieu of voucher, and by judgment in it the plaintiff might bind the lands of the warrantor, and have damages awarded to him. *Roscoe's Real Act.* 142. See 4 *Kent's Com.* 469, 471. *Fleta* calls it *warrantia cartæ*. *Lib.* 6, c. 35.

WARRANTIA DIEI. L. Lat. Warranty of day. See *De warrantia diei*.

WARRANTIZARE, *Warantizare*, *Warantizare*, *Warrantizare*. L. Lat. [L. Fr. *garaunter*.] In old conveyancing. To warrant; to bind one's self by covenant in a deed of conveyance, to defend the grantee in his title and possession. *Warrantizabo*, (I will warrant,) and *warrantizabimus*, (we will warrant,) were words used in old charters, to express a warranty. *Et ego et hæredes mei warrantizabimus tali et hæredibus suis tantum, vel tali et hæredibus suis et assignatis, et hæredibus assignatorum, et assignatis assignatorum, et eorum hæredibus, et acquietabimus et defendemus eis totam*

*terram illam cum pertinentiis contra omnes gentes imperpetuum, per prædictum servitium.* (And I and my heirs will warrant to such a one and his heirs, only, or to such a one and his heirs and assigns, and the heirs of his assigns, and the assigns of his assigns and their heirs; and will acquit and defend to them all that land with the appurtenances, against all people forever, by the aforesaid service.) *Bract.* fol. 37. See *Fleta*, lib. 3, c. 14, § 10. By this word, *warrantizabimus*, Bracton observes, the donor takes upon himself the obligation to defend his tenant [or donee] in the possession of the thing given, and his assigns and their heirs, and all others, if the tenement given should happen to be claimed by any one in demesne. *Id.* fol. 37 b. Of *warrantizo*, (I warrant,) Littleton observes, "this word and verb makes a warranty, and is the cause of warranty, and no other word in our law." *Litt.* sect. 733. *Co. Litt.* 384 a.

In old practice. To defend and acquit a tenant who had vouched the warrantor, in his seisin. *Warrantizare nihil aliud est quam defendere et acquietare tenentem, qui warrantum vocavit, in seysina sua.* *Bract.* fol. 380 b. *Fleta*, lib. 6, c. 23, § 2. *Co. Litt.* 365. To fulfil one's covenant of warranty, either by successfully defending the title in an action, or, in case of failure, by indemnifying the tenant with other lands of equal value.

WARRANTIZATIO. L. Lat. [from *warrantizare*, q. v.] In old English law. Warranty. See *Warrantizatio*.

WARRANTUS, *Warantus*. L. Lat. [L. Fr. *garaunt*.] In old English law. A warrahtor; one who had warranted land by covenant, and might, therefore, be called upon or vouched to defend the title for the tenant. *Si [tenens] warrantum habuerit, illum statim vocat*; if he [the tenant] have a warrantor, he should immediately vouch him. *Bract.* fol. 380. The expressions *warrantum vocare*, (to call or vouch a warrantor,) and *ad warrantum vocare*, (to call to, or upon a warrantor,) are indifferently used by Bracton. *Id.* fol. 380 b, *et passim*. The former of these answers literally to the *garaunt vocher* of Britton. *Britt.* c. 75. "To vouch to warranty" is the usual English phrase in the old books.

WARRANTY. [L. Lat. *warrantia*, *warrantizatio*; L. Fr. *garaunt*, *garrant*.] In old English conveyancing. An undertaking by covenant to defend a tenant or

grantee in his seisin, against an adverse claimant of the land. *Bract.* fol. 37 b, 380 b. *Britt.* c. 75.

In old practice. The complying with or fulfilling one's covenant of warranty, by defending the title or seisin of a tenant or grantee, in an action brought against him by an adverse claimant of the lands conveyed; and in case of failure so to defend the seisin, by indemnifying the tenant for the lands he lost, by conveying to him others of equal value, which was called making exchange to the value, (*excambium ad valentiam.*) *Bract.* lib. 5, tract. 4. *Britt.* c. 75.

Warranty was one of the most important and extensive heads of the old law of real property, distinguished for its abstruseness and multiplied refinements. Lord Coke has pronounced the learning of warranties to be "one of the most curious and cunning learnings of the law." A leading distinction was into *lineal* and *collateral* warranty, (qq. v.) But this branch of the law has long fallen into disuse, never was generally adopted in American jurisprudence, has been expressly abolished in some of the states, and is now at length abolished also in England, by statute 3 & 4 Will. IV. cc. 27, 74. 1 *Steph. Com.* 455. See 4 *Kent's Com.* 468—472, and notes.

WARRANTY. In modern law. An undertaking or stipulation, in writing, or verbally, that a certain fact in relation to the subject of a contract, is, or shall be as it is stated or promised to be. *Warranty* forms an important part of the contracts of sale and of insurance, and though generally *expressed*, is frequently *implied* by law. The common *express* warranty of an article sold is, that it is free from defect, but the law will *imply* a warranty of the *title*, provided the seller sells it as his own, and for a fair price. See 2 *Kent's Com.* 478.

When a person *warrants* an article, he makes himself liable for any defect in the matter to which the warranty applies, whether he knew it or not; but when he makes a bare *representation*, it is necessary to aver and prove that he knew the representation to be false, otherwise he is not liable in damages. Dewey, J. 4 *Metcalf's R.* 155, and cases there cited. The distinction between a *warranty* and a *representation* is an important one in the law of insurance. See 5 *Hill's* (N. Y.) *R.* 188; and see *infra*.

WARRANTY. In insurance law. A

stipulation or undertaking by a party insured, in reference to a vessel or property which is the subject of insurance.

An *express* warranty is a stipulation inserted in writing on the face of the policy, on the literal truth or fulfilment of which the validity of the instrument depends. 1 *Arnould on Ins.* 577, (580, Perkins' ed.) These written stipulations either allege the existence of some fact or state of things at the time, or *previous* to the time of making the policy, as that the thing insured is neutral property, that the ship is of such a force, that she sailed on such a day, or was all well at such a time; or they undertake for the happening of *future* acts, as that the ship shall sail on or before a given day, that she shall depart with convoy; that she shall be manned with such a complement of men, &c. *Id. ibid.* The *implied* warranty in a policy is that the vessel is seaworthy. *Id.* 652, 653.

A *warranty* is generally a stipulation made and described in the policy itself, and must be complied with, whether material or not; but a *representation* is generally not given in detail in the policy, but verbally, or in a separate writing, if the property be situated at a distance. 2 *Woodb. & Min. R.* 472. In the law of insurance a *representation* is not a part of the contract, but is collateral to it; whereas an *express warranty* is always a part of the contract. Bronson, J. 5 *Hill's* (N. Y.) *R.* 188. But see 2 *Duer on Ins.* 644—646. "By the English and American law," observes Mr. Duer, "every affirmation of a fact contained in the policy, in whatever terms expressed, is construed as a warranty; but where the statement relates, not to facts, but to the information, expectation or belief of the party, it is plain that it cannot be thus construed; and it is equally clear that when the parties declare that the statement, although positive in its terms, shall be construed as a representation, and not as a warranty, the intention so disclaimed must supersede the general rule." *Id.* 644, 645.

WARREN. [L. Lat. *wareнна*, *warrenna*; L. Fr. *garene*, from *garenner*, to prohibit; or from Germ *wahren*, to protect, or defend.] In English law. A place privileged by prescription, or royal grant, for the keeping and preservation of certain animals, called beasts and fowls of warren, (q. v.) *Cowell.* 1 *Crabb's Real Prop.* 91, § 97. *Barringt. Obs. Stat.* 47, 48,

note [d.] Literally, a place protected by special privilege, or the use of which is prohibited to all but certain individuals.\* The name is now chiefly preserved in grounds that are set apart for breeding hares and rabbits. 2 *Bl. Com.* 39.

A franchise, or sole and exclusive power of killing certain descriptions of game, so far as a person's warren extended, on condition of his preventing other persons.\* 2 *Bl. Com.* 39. 2 *Steph. Com.* 21, 83. Generally termed *free-warren*, (q. v.)—A privilege which one has in his lands, by royal grant or prescription, of hunting and taking wild beasts and birds of warren, to the exclusion of any other person not entering by his permission. *Spelman*.

WARRETTEZ. L. Fr. In old English law. Fallow. *Yearb. H.* 3 Edw. II. 68.

WARRETS. L. Fr. Fallow. *Yearb. T.* 4 Edw. III. 7.

WARSCOT. In Saxon and Danish law. A customary contribution towards armor among the Saxons, mentioned in the forest laws of Canute. *Quieti ab omnibus armorum oneribus quod Warscot Angli dicunt*; quit of all burdens of arms which the English call *varscot*. *LL. Forest. Canut. Reg. num.* 9. *Cowell*.—Money paid for castle-guard, or for keeping watch and ward; the same as *ward-penny*. *Spelman*.

WARTH. In old English law. A customary payment, supposed to be the same with *ward-penny*, (q. v.) *Spelman*. *Blount*.

WAST. L. Fr. Waste. *Wast de boys*; waste of woods. *Britt. c.* 66.

WASTE. [L. Fr. *wast, gast*; L. Lat. *vastum*.] A spoil made either in houses, woods, lands, &c. by the tenant for life or years, to the prejudice of the heir, or of him in the reversion or remainder. *Cowell*. *Kitchin*, 168.—A spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee-simple or fee-tail. *Co. Litt.* 53. 2 *Bl. Com.* 284.—The destruction or material alteration of any part of a tenement, [by a tenant for life or years] to the injury of the person entitled to the inheritance; such, for example, as the demolition of buildings, or the cutting of timber. 1 *Steph. Com.* 241.—Spoil and destruction done, or allowed to be done, to houses, woods, lands, or other corporeal hereditaments, by the tenant

thereof, during the continuance of his tenancy. 3 *Id.* 503.—A spoil and destruction of an estate, either in houses, woods or lands; by demolishing, not the temporary profits only, but the very substance of the thing, thereby rendering it wild and desolate; which the common law expresses very significantly by the word *vastum*. 3 *Bl. Com.* 223.

Waste and destruction, according to Bracton, are convertible terms, and signify the same thing, (*convertibiliter se habent vastum et destructio, et vastum idem est quod destructio*.) *Bract. fol.* 316 b. Fleta observes that they are almost equipollent, and are indifferently applicable to houses, woods and gardens, (*fere æquipollent, et convertibiliter se habent in domibus, boscis et gardinis*.) *Fleta*, lib. 1, c. 12, § 20. Britton, however, applies the term particularly to trees or woods, (*wast de boys, destruction de tenementz*.) *Britt. c.* 66. See *Co. Litt.* 52 b, 53.

Waste is either voluntary, or permissive; the one by an actual and designed demolition of the lands, woods and houses; the other arising from mere negligence, and want of sufficient care in reparations, fences and the like. 3 *Bl. Com.* 223. 2 *Id.* 281. See *Voluntary waste*, *Permissive waste*.

Waste may be committed not only by destruction, but by *alteration* of any part of a tenement. Thus, the conversion of land from one species to another, as of woodland into arable, and *vice versâ*, is waste. 2 *Bl. Com.* 282. 7 *N. Hamp. R.* 171. The conversion of two chambers of a tenement into one is waste. 4 *Kent's Com.* 76, note. And, in general, whatever does a lasting damage to the freehold or inheritance, is waste. 2 *Bl. Com.* 281. As to what particular acts by a tenant constitute waste, see *Archb. Landl. & Ten.* 197—201. *Roscoe's Real Act.* 116—119. *Cruise's Dig.* tit. iii. ch. 2. For the American law of waste, see 4 *Kent's Com.* 76—82. 11 *Metcalf's R.* 304, 310—312. *United States Digest*, Waste. 1 *Hilliard's Real Prop.* 262—267. 1 *Greenleaf's Cruise's Digest*, 115—120, notes.

WASTE, *Writ or action of*. In old practice. A remedy given for waste in lands, houses, &c. partly founded upon the common law, and partly founded upon the statute of Gloucester, which lay for one who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, tenant in dower, tenant by curtesy,

or tenant for years.\* 3 *Bl. Com.* 227. It was a mixed action, partly real, so far as it recovered land, and partly personal, so far as it recovered damages. For it was brought for both these purposes, and if the waste were proved, the tenant recovered the thing or place wasted, and also treble damages. *Id.* 228. See *Roscoe's Real Act.* 107, 121—125.

This action, after having long fallen into disuse, was expressly abolished in England by the statute 3 & 4 Will. IV. c. 27. In the United States, it has been generally adopted, though little used, being for the most part superseded in practice by an action on the case in the nature of waste, to cover damages, or by bill in equity. 4 *Kent's Com.* 77, 79, 80. See 1 *Greenl. Cruise's Dig.* 122, note. 1 *Hilliard's Real Prop.* 268—276.

**WASTE.** In old English criminal law. A prerogative or liberty on the part of the crown, of committing *waste* on the lands of felons, by pulling down their houses, extirpating their gardens, ploughing their meadows, and cutting down their woods. 4 *Bl. Com.* 385. See *Year, day and waste.*

**WASTEL.** [L. Fr. *gastel*; L. Lat. *wastellum*.] In old English law. The finest sort of bread. *Britt.* c. 30. *Cowell.*

**WASTELLUM.** L. Lat. In old English law. Wastel; a kind of bread. *Fleta*, lib. 2, c. 9, §§ 1, 2.

**WASTINUM.** L. Lat. In old records. Waste ground, or desert. *Cowell. Chartul. Abbat. Glaston.* MS. cited *ibid.*

**WASTORS.** In old statutes. A kind of thieves. "There have been divers man-slaughters, felonies and robberies, done by people called Roberdsmen, *Wastors*, and Drawlatches." *Stat. 4 Hen. IV.* c. 27. *Stat. 5 Edw. III.* c. 14.

**WATCH AND WARD.** In English law. The duty of keeping *watch* by night, and *guard* by day, in a town or other district.\* One of the principal duties of constables, arising from the statute of Winchester. 1 *Bl. Com.* 356. *Ward*, guard, or *custodia*, is chiefly applied to the day time, in order to apprehend rioters and robbers on the highways. *Watch* (Teut. *wach*t or *wacta*) is properly applicable to the night only, and it begins at the time when *ward* ends, and ends when that begins.\* *Id.* 356, 357. See 4 *Id.* 292.

**WATER,** [Lat. *aqua*; L. Fr. *awe*, *eawe*, *eue*; Fr. *eau*,] is considered in law as a mere incident or appurtenant to land, and

cannot be conveyed or recovered independently of the land which it covers. *Aqua cedit solo.* Water belongs to, or goes with the land. Land, on the other hand, includes water as well as other things that are upon it. "And therefore," observes Sir William Blackstone, "I cannot bring an action to recover possession of a pool or other piece of water, by the name of *water* only; either by calculating its capacity, as for so many cubical yards; or by superficial measure, for twenty acres of water; or by general description, as for a pond, a water-course, or a rivulet; but I must bring my action for the *land* that lies at the bottom, and must call it twenty acres of *land covered with water.* *Brownl.* 142. For water is a moveable, wandering thing, and must of necessity continue common by the law of nature; so that I can only have a temporary, transient, usufructuary property therein: wherefore, if a body of water runs out of my pond into another man's, I have no right to reclaim it. But the land which that water covers is permanent, fixed and immoveable: and, therefore, in this I may have a certain substantial property, of which the law will take notice, and not of the other." 2 *Bl. Com.* 18. See 1 *Hilliard's Real Prop.* 51. 2 *Id.* 100. By a grant of water, nothing passes but a right of fishing, or the right to use the water, as in the case of rivers and mill streams. 2 *Chitt. Bl. Com.* 19, and note. See 1 *Crabb's Real Prop.* 107, § 104. 1 *Chitt. Gen. Pr.* 189—191.

**WATER-BAILIFF.** In English law. An officer in port towns, whose duties in general relate to the searching of ships. *Cowell.*

**WATER-BAYLEY.** In American law. An officer mentioned in the colony laws of New-Plymouth, (A. D. 1671,) whose duty was to collect dues to the colony for fish taken in their waters. *Colony Laws*, (ed. 1836,) 164, 166. Probably another form of *water-bailiff*, (q. v.)

**WATER-COURSE.** [L. Lat. *aquæ cursus*; L. Fr. *cours del ewe*.] A running stream of water; a body of running water; a natural stream, including rivers and rivulets. See *Angell on Water-Courses*, § 3. A water-course consists of water, bed and banks. 3 *Ohio R.* 495. *Cowen, J.* 20 *Wendell's R.* 153. It may be artificial as well as natural. 3 *Kent's Com.* 442, note.

The easement of receiving water in its accustomed course. 1 *Crabb's Real Prop.*

355, § 405.—The right which a man may have to the benefit of the flow of a river or stream. 2 *Steph. Com.* 12.

This right most commonly refers to a stream passing through a person's own land, (1 *Tyr. & Gran.* 398,) and the banks of which belong either to himself on both sides, or to himself on one side and to his neighbor on the other; in which latter case, (unless the stream be navigable,) the proprietor of each bank is considered as *primâ jacie* the proprietor also of half the land covered by the stream, that is, *usque flum aquæ*. *Hale de Jur. Maris*, pars 1, c. 1. 1 *Sim. & Stu.* 190. 2 *RoL. Abr.* 170. 2 *Steph. Com.* 12. In either case, however, it is distinguishable from the right of merely using the water upon the soil, (which is incident, as of course, to the property in the soil itself;) it is the right of having the course of the stream kept free from any interruption or disturbance to the party's prejudice, by the acts of persons from without and in parts not within his own territory, whether consisting in a diversion of it, or an obstruction, or a pollution by offensive commixture. *Id. ibid.* The maxim is *Aqua currit, et debet currere, ut currere solebat*, (q. v.) See further, 3 *Kent's Com.* 439, 447. A water-course is regarded in law as a part of the land over which it flows, and will therefore pass with the latter by a deed or patent, unless expressly reserved. 2 *Hilliard's Real Prop.* 100.

**WATER-GANG.** Sax. [L. Lat. *aquagangia*, *watgangium*.] In old records. A passage for water; a trench to carry a stream of water, such as were usually made in sea-walls, to drain water out of the marshes. *Cowell. Spelman*, voc. *Aquagium*. *Dugdale on Imbanking*, 21, *et passim*.

**WATER-GAVEL.** In old records. A gavel or rent paid for fishing in, or other benefit received from some river or water. *Cowell. Blount*.

**WATER-MEASURE.** In old statutes. A measure greater than Winchester measure by about three gallons in the bushel. *Stat. 22 Car. II.* *Cowell*.

**WATER-ORDEAL.** [L. Lat. *judicium aquæ*.] In Saxon and old English law. The ordeal or trial by water, which was of two kinds; by hot water, and by cold water.

The *hot water* ordeal, (*aqua fervida* or *calida*;) was performed by plunging the bare arm up to the elbow in boiling water,

and escaping unhurt thereby. 4 *Bl. Com.* 243. *Spelman*, voc. *Judicium Dei*, *Ordalium*.

The *cold water* ordeal, (*aqua frigida*;) was performed by casting the person suspected into a river or pond of cold water, when, if he floated therein, without any action of swimming, it was deemed an evidence of his guilt; but if he sunk, he was acquitted. *Id. ibid.*

**WATLING (or WETLING) STREET.** [Sax. *Wæteling Stræte*; L. Lat. *Via Vætelingiana*.] One of the four great Roman ways or roads in Britain. *Cowell. Blount. LL. Gul. Cong.* l. 30. *Fleta*, lib. 2, c. 61, § 21. Otherwise called *Verlam Street*, from its passing through Verulam. *Spelman*, voc. *Ikenild Street*.

**WAVESON.** In old records. Such goods as, after a wreck, swim or float on the waves. This word occurs, in connection with *flotteson* and *lagason*, in a charter granted by Arthur Plantagenet, High Admiral of England, to the mayor and citizens of Rochester, dated Dec. 4. 18 Hen. VIII. *Cowell. Blount.* See *Flotsam*.

**WAY.** [Lat. *via*; L. Fr. *chemyn*, *chimin*; L. Lat. *chiminus*, *chiminum*.] A road; a street; a passage or path. A way, in the most general sense, includes highways as well as private ways. See *Co. Litt.* 56 a.

A private road, passage or path over another's ground. Lord Coke divides ways into three kinds: first, a foot-way, (*iter*;) second, a foot-way and horse-way, (*actus*;) which he says is vulgarly called pack and prime way, because it is both a foot-way, which was the first or *prime* way, and a pack or drift-way also; and third, [a way in the largest sense] *via*, or *aditus*, which contains the other two, and also a cart-way. *Co. Litt. ub. sup.* This division, and the terms of it, are obviously taken from the civil law. *Inst.* 2. 3, pr. See *Bract.* fol. 232.

The right of going over another man's ground. 2 *Bl. Com.* 35. A right of private passage over another man's ground. 3 *Kent's Com.* 419. A right of way, public or private, is held to be an incorporeal hereditament. Nelson, J. 12 *Wendell's R.* 98. Cowen, J. 20 *Id.* 99. Holman, J. 1 *Blackford's R.* 45. This sense of the term, importing a *right* to use a road or path, instead of the *road* or *path* itself, is taken from the civil law. *Via est jus eundi, et agendi, et ambulandi*; way is a right of

going and driving and walking. *Inst.* 2. 3, pr.

WAYA. L. Lat. In old English law. A way, (a measure or weight.) Two ways of wool made a sack. *Fleta*, lib. 2, c. 12, § 2.

WAY-GOING CROP. In the law of leases. A crop of grain to which tenants for years are sometimes entitled by custom; grain sown in the fall to be reaped at the next harvest; a crop which will not ripen until after the termination of the lease. See 1 *Hilliard's Real Prop.* 61, and note. See *Away-going crop*.

WAYF. An old form of *waif*, (q. v.)

WAYVIARE. See *Waiviare*.

WAYVIUM. L. Lat. In old English law. A waif; that which no one claims, (*est wayvium quod nullus advocat.*) *Bract.* fol. 125 b.

WEALD. Sax. A wood; the woody part of a country, as the *weald* of Kent. *Camd. Brit.* 247. 4 *Mod.* 343, arg.

WEAR, *Weir*. [from Sax. *were*, a taking; L. Lat. *wera*, *wara*.] A place in a river, artificially constructed for taking fish, by so narrowing the stream by dams projecting from each bank, that the passage may be easily closed by a net. *Spelman*, voc. *Wara*.

WEDBEDRIP. Sax. [from *wed*, a covenant, *biddan*, to pray or desire, and *rip-pan*, to reap or mow.] In old English law. A customary service which tenants paid to their lords, in cutting down their corn [grain,] or doing other harvest duties. As if a covenant to reap for the lord at the time of his *bidding* or commanding. *Cowell*.

WEDDE. Sc. [L. Lat. *vadium*.] In old Scotch law. A pledge. *Skene de Verb. Sign.* voc. *Vadium*.

WEDUE. L. Fr. [from Lat. *vidua*.] In old English law. Widow; a widow. *Wedues femmes*; widows. *Britt.* c. 21.

WEF. L. Fr. In old English law. A waif. *De wefs à nous apurtenauntz*; of waifs belonging to us. *Britt.* c. 17.

WEHADINC. In old European law. The judicial combat, or duel; the trial by battel. *De pugna duorum quod wehadine vocatur. Decret. Tassilonis in LL. Bai-war.* § 5. So called, according to *Spelman*, from the Sax. *wead*, a pledge, being another form of *weading*, a giving of pledge, a covenanting. It seems to correspond closely to the English *wager of battel*.

WEIF. An old form of *waif*, (q. v.) *Ingulph. Hist. Croyl.* 875. *Spelman*. It occurs also in Britton. *Et weifs ou estray. Britt.* c. 17. *De weifs ou de wrekkas de meer. Id.* c. 29.

WELL. [Lat. *bene*; Fr. *bien*.] In the old reports. Good; sufficient; unobjectionable in law; the opposite of *ill*. "Held well" is a common expression in the reports. "And *per curiam*, well." 1 *Show.* 350. See *Bien*, *De bene esse*.

Advisable, or proper. See *Bien*.

Allowed as sufficient or valid, though not in strict form. "Well enough" was a common phrase. *Latch*, 196. 10 *Mod.* 270. 11 *Id.* 403. "Not proper, but well enough." 11 *Id.* 363.

WELL. In marine insurance. A word used in warranties of a ship's safety at a particular time and place, which are briefly expressed in or at the foot of the policy, "warranted well," (at such a date.) The word "well," in such warranty, refers solely to the state of the ship *on the day* of signing the policy. 1 *Arnould on Ins.* 586, (589, Perkins' ed.)

WELSH MORTGAGE. A species of mortgage frequently mentioned in the English books, though now out of use, resembling the ancient *mortuum vadium* described by Glanville; being a conveyance of an estate, redeemable at any time, on payment of the principal, with an understanding that the profits in the mean time shall be received by the mortgagee without account, in satisfaction of interest. *Coote on Mortg.* 9, 207: 4 *Kent's Com.* 137. The Welsh mortgage, under its strict contract, without any mitigation of its severity in equity, was analogous to the contract termed *antichresis*, (q. v.) in the Roman law. *Id. ibid.* note.

WEND. [L. Lat. *wendus*; from O. Eng. *wend*, to go.] In old records. A large extent of ground, comprising several *juga*; a perambulation; a circuit. *Spelman. Cowell*.

WEA. L. Lat. In Saxon and old English law. A were; the price or value of a person. *Spelman*. See *Were*.

A wear for taking fish. *Id.*

WERE. Sax. [L. Lat. *wera*.] In Saxon law. Price, (*pretium*;) the price or value of a man's life, (*æstimatio capitis*;) a sum paid for killing a man; the price of one's ransom. *LL. Edw. Conf.* c. 11. 1 *Reeves' Hist. Eng. Law*, 15. *Co. Litt.* 127 a, 287 b. *Spelman*. A fine which a mur-

derer had to pay to the family or relatives of the deceased. *Bosworth's Anglo-Sax. Dict. voc. Were and wite.* By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis*. *Crabb's Hist. Eng. Law*, 38. *LL. Gul. Cong.* ll. 8, 9, and Kelham's notes. The *were* is also considered to correspond with the modern *damages*. See *Sedgwick on Damages*, 10—17, and notes.

Spelman supposes this word, though literally importing *price*, to have reference also to the meaning of the Sax. *wer*, *wær*, a man, (*vir.*)

**WEREGELT THEF.** Sax. In old English law. A robber who might be ransomed. *Fleta*, lib. 1, c. 47, § 13.

**WERELADA.** Sax. and L. Lat. In Saxon and old English law. Purgation of a were or fine, (*purgatio weræ.*) *Spelman.* Purgation upon oath of other persons, according to the value or estimate of the person accused. *LL. Hen. I.* c. 12. *Cowell.*

**WEREGILD, Wergild, Weregelt.** Sax. [from *were*, price, or *wer*, a man, and *gild* or *geld*, a payment; O. Sc. *wergett*, *vergett*; L. Lat. *wergildus*, *wergilda*, *wergildum*, *wergeldum*, *weregildus*, *weregildum*, *geweregildum*, *barrigildum*, *varigildum*.] In Saxon and old European law. Payment of a were, (q. v.) compensation for a man; the payment of the price or value of a man slain, (*pretii vel æstimationis capitis solutio*;) otherwise called in Saxon, *man-wyrth*. *Spelman.* A private pecuniary satisfaction paid to a party injured, or to his relations, where he was slain, in expiation of the offence. 4 *Bl. Com.* 312.

**WERGELT, Vergelt.** In old Scotch law. A sum paid by an offender, as a compensation or satisfaction for the offence; a wergild, or wergild. *De unoquoque fure per totam Scotiam est wergelt* 30 vacæ et una juventa, sive fuerit liber homo sive servus; of every thief throughout Scotland, the wergild is thirty cows and one heifer, whether he be a free man or a slave. *Reg. Maj.* lib. 4, c. 19.

**WERP-GELD.** Belg. [from *werpen*, to throw away, and Sax. *geld*, a payment.] In European law. Contribution for jettison; average. *Loccen. de Jur. Mar.* lib. 2, c. 8, § 1.

**WERPIRE.** L. Lat. [from Germ. *werpen*.] In old European law. To throw;

to throw away; to waive. *Spelman.* Wreck is called in a charter granted by king Edward to the church of Ramesey, *seupwerp*, which Spelman thinks may be analyzed *sea-up-werp*, i. e. thrown up by, or out of the sea, (*ejectus maris.*)

**WERRA, Guerra.** L. Lat. In old English law. War; private war, as well as public. *Spelman.* *Nisi tempore werræ*; unless in time of war. *Artic. Mag. Cart. Johan.* c. 33. *Guerra* is the form used in continental law. *Calv. Lex.*

**WERRINUS.** L. Lat. [from *werra*, q. v.] In old English law. In a state of war; at war. *Spelman.*

**WERVAGIUM.** L. Lat. In old records. Wharfage; money paid at a wharf for lading or unlading goods. 1 *Mon. Angl.* 550. *Cowell.*

**WESTMINSTER.** [Sax. *Westmynster*; L. Lat. *Westmonasterium*.] A city immediately adjoining London, and forming a part of the metropolis; distinguished as the seat of the four superior courts of the kingdom. See *Superior Courts*.

**WESTMINSTER THE FIRST, Statute of.** A celebrated statute passed at a parliament holden at Westminster, in the third year of the reign of Edward I. A. D. 1275. It is written in Law French, and contains fifty-one chapters. Lord Coke has commented at large on this statute in his second Institute, and Mr. Reeves has given a synopsis of its contents. 2 *Reeves' Hist. Eng. Law*, 107—139. It was called *the first*, to distinguish it from two subsequent statutes, denominated likewise from parliaments held at the same place. See *Barringt. Obs. Stat.* 77—102.

**WESTMINSTER THE SECOND, Statute of.** A celebrated statute passed at a parliament holden at Westminster in the thirteenth year of Edward I. A. D. 1285. It is written in Law Latin, and is commented on by Lord Coke in his second Institute. It contains provisions on a variety of subjects, and its first chapter is called, from the subject of it, the *Statute de Donis Conditionalibus*, (q. v.) See *Barringt. Obs. Stat.* 127—148.

**WESTMINSTER THE THIRD, Statute of.** A statute passed in the eighteenth year of Edward I. A. D. 1290. More commonly known as the Statute of *Quia Emptores*, (q. v.) See *Barringt. Obs. Stat.* 167—169.

**WESTMONASTERIUM.** L. Lat. Westminster. A large proportion of the an-

cient English writs are tested and made returnable *apud Westmonasterium*, at Westminster. *Reg. Brev. per tot.*

**WEST-SAXON LAGE.** [Sax. *West-seaxna-laga*.] The laws of the West Saxons, which obtained in the counties to the south and west of England, from Kent to Devonshire. Blackstone supposes these to have been much the same with the laws of Alfred, being the municipal law of the far most considerable part of his dominions, and particularly including Berkshire, the seat of his peculiar residence. 1 *Bl. Com.* 65.

**WEYVIARE,** *Weyvare*. L. Lat. In old English law. To waive; to relinquish or abandon. *Bract.* fol. 80 b. *Fleta*, lib. 3, c. 10, § 3.

To outlaw a woman. *Fleta*, lib. 1, c. 27, §§ 12, 13.

**WEYVIUM.** L. Lat. In old English law. Waif; that which no one claims, (*est weyvium quod nullus advocat.*) *Fleta*, lib. 1, c. 27, § 13.

A wandering animal which no one seeks, follows or claims, (*pecus vagans quod nullus petit, sequitur, vel advocat.*) *Id.* lib. 1, c. 43, § 2. But this is rather the definition of an *estray*.

**WHARF.** [L. Lat. *wharfa*.] A perpendicular bank or mound of timber, or stone and earth, raised on the shore of a harbor, river, canal, &c. or extending some distance into the water, for the convenience of lading and unlading ships and other vessels. *Webster*. Defined by Cowell, "a broad, plain place near a creek or lithe of the water, to lay wares on, that are brought to or from the water." By Spelman, "a shore where wares are sold and exchanged," (*littus ubi merces vœneunt et permutantur.*) Spelman derives the word from the Sax. *hwyrfen*, to exchange.

**WHARFAGE.** [L. Lat. *wharfagium*.] Money paid for landing wares at a wharf, or for shipping or taking goods into a boat or barge from thence. *Cowell*.

**WHARFINGER.** One who owns or keeps a wharf, or has the oversight or management of it. *Cowell*. A wharfinger has a lien on goods deposited at his wharf, for the money due for the wharfage of those goods. 1 *Esp. N. P. R.* 109. 3 *Id.* 81. 2 *Kent's Com.* 642.

**WHEEL.** In criminal law. An instrument of a barbarous kind of capital punishment, called *breaking on the wheel*, said to have been first employed in Germany, ac-

cording to some writers, on the murderers of Leopold, Duke of Austria, in the 14th century. According to the German method of this savage execution, the criminal was laid on a *cart-wheel*, with his arms and legs extended, and his limbs in that posture fractured with an iron bar. But in France, (where it was restricted to cases of assassination, or other murders of an atrocious description, highway robbery, parricide and rape,) the criminal was laid on a frame of wood in the form of a St. Andrew's cross, with grooves cut transversely in it, above and below the knees and elbows, and the executioner struck eight blows with an iron bar, so as to break the limbs in those places, sometimes finishing the criminal by two or three blows on the chest or stomach, thence called *coups de grace*. This punishment was abolished in France at the Revolution; but it is still resorted to in Germany, as the punishment for parricide, the last instance of which took place in 1827, near Gottingen. The assassin of the bishop of Ermeland in Prussia, in 1841, was sentenced to the wheel. *Brande*.

"**WHERESOEVER,**" in a policy of insurance, construed. 1 *M. & S.* 418.

"**WHILST,**" in a lease, construed. 7 *East*, 116.

**WHITE ACRE.** A fictitious name given to a piece of land, in the English books. See *Black acre*.

**WHITE BONNET.** In Scotch law. A fictitious offerer or bidder at a roup or auction sale. *Bell's Dict. voc. Articles of Roup*.

**WHITE RENT.** [L. Lat. *redditus albus*.] In old English law. Rent payable in silver, or white money. Otherwise called *white farm*, (*alba firma*, or *firma blanca*,) and *blanch farm*, or *ferme*, (Fr. *blanche ferme*.) See *Alba firma*, *Blanch ferme*.

**WHITTANWARII.** L. Lat. In old English law. A class of offenders who whitened stolen ox-hides and horse-hides so that they could not be known and identified. *Stat. Walliæ*, 12 *Edw. I.* *Baringt. Obs. Stat.* 124, note [f].

**WHOLE BLOOD.** In the law of descent. Blood which is compounded wholly of the same ingredients; blood which is derived from the *same couple* of ancestors.\* A kinsman of the *whole blood* is he that is derived, not only from the same ancestor, but from the same *couple* of ancestors. For, as every man's own blood is compounded of the bloods of his respective ancestors,

he only is properly of the *whole* or entire blood with another, who hath, (so far as the distance of degrees will permit,) all the same ingredients in the composition of his blood that the other had. Thus, the blood of John Stiles being composed of those of Geoffrey Stiles his father, and Lucy Baker his mother, therefore his brother Francis, being descended from both the same parents, hath entirely the same blood with John Stiles; or he is his brother of the *whole blood*. But if, after the death of Geoffrey, Lucy Baker the mother marries a second husband, Lewis Gay, and hath issue by him: the blood of this issue, being compounded of the blood of Lucy Baker, (it is true) on the one part, but that of Lewis Gay (instead of Geoffrey Stiles,) on the other part, it hath therefore only half the same ingredients with that of John Stiles; so that he is only his brother of the *half blood*. 2 *Bl. Com.* 227.

**WHOLESALE.** Sale in a whole or unbroken quantity; sale of goods by the piece or quantity.\* "The term *wholesale* implies the selling in unbroken pieces or parcels, as [in the case of liquors,] by the barrel, pipe, cask, &c. or in a number of such pieces or parcels; while the word *retail* implies the cutting or dividing up such pieces, parcels or casks into small quantities, and selling to customers in such manner." 2 *Wisconsin R.* 237, 243.

**WIC, Wik, Wyc.** Sax. [from Gr. *oikos*, house.] In old English law. A house. *Spelman*. A country house, or farm, (*wica*.) *Cowell*. *Concessimus Andreæ de wik, pro homagio et servitio suo, wicam de manerio nostro*; we have granted to Andrew of the *wik*, for his homage and service, a *wic* of our manor. *Chartul. Abbat. Glaston. MS.* fol. 29, apud *Cowell*.

A castle, (*castrum*.) Called *wic*, according to *Spelman*, because constructed with a rampart, mound or embankment, in the sense of the Dutch *wiick*.

A town, (*villa*.) or village, (*vicus*.) In this sense, the word is more closely allied to the Lat. *vicus*, than the Gr. *oikos*, (*supra*.) *Spelman*.

**WIC, Wich, Wig.** Sax. [from Germ. *weghen*, to recede or go back.] In old English law. A bay of the sea, or of rivers, (*sinus maris vel fluviorum*;) as though formed by a recess of the land or stream. *Spelman*. A place where ships lie and unload. *Id.* See *Wig*.

In old European law. A grove, (*lucus*;) a small wood, (*minuta sylva*.) *L. Baiwarior.* tit. 21, § 6. *Spelman*.

**WIC, Wich, Wick.** A common termination of the names of towns and villages in England. In this connection, *Spelman* supposes *wic* to denote a village or wood; and *wich*, a bay, or sometimes a castle, as *Norwich*.

**WICK.** A termination of words denoting jurisdiction, or limits of jurisdiction or authority. *Bailiwick* is the district within which a bailiff or sheriff may lawfully exercise his office. *Sheriff-wick* is used in some of the old books, but is now superseded by the former word.

**WIDRIGILD, Widrigilt.** Lomb. In old Lombardic law. The same as *werigild* or *vergild*, (q. v.) *LL. Longob.* lib. 2, tit. 1, c. 9. *Spelman*.

**WIFA, Wiffa.** L. Lat. In old European law. A mark, or sign, (*signum*;) a mark set up on land, to denote an exclusive occupation, or to prohibit entry. *L. Boior.* tit. 9, c. 12. *LL. Longob.* lib. 3, tit. 3, l. 6. *Spelman*.

**WIFARE, Guifare, Guiphare.** L. Lat. In old Lombardic law. To set or fix up a mark or sign, (*wifa*, q. v.) upon land or a house, [as a symbol of exclusive occupancy.] *Domus vel casæ wifentur.* *LL. Longob.* lib. 3, tit. 3, l. 6. *Terram alienam sine publico jussu guifaverit*; put a mark upon another's land, without public order. *Id.* lib. 1, tit. 27, l. 8. *Spelman*.

**WIFE'S EQUITY.** The equitable right or claim of a married woman to a reasonable and adequate provision, by way of settlement or otherwise, out of her *choses in action*, or out of any property of hers which is under the jurisdiction of the Court of Chancery, for the support of herself and her children.\* 2 *Kent's Com.* 139. 1 *White's Equity Cases*, 305, note. *Id.* 323, Am. ed. note.

The wife's equity is a claim which attaches upon her personal property, whenever it is subject to the jurisdiction of the court, and is the object of a suit in any hands to which it may come, or in whatever manner it may have been transferred. It makes no difference whether the application to the court for the property be by the husband, or his representatives, or assignees, or by the wife or her trustee seeking a provision out of the property. 5 *Johns. Chanc. R.* 464. 2 *Kent's Com.* 140, and cases cited *ibid.* As between the husband and the wife, the principle is, that if

the husband wants the aid of chancery to enable him to get possession of his wife's property, or if her fortune be within the reach of the court, he must do what is equitable, by making a reasonable provision out of it for the maintenance of her and her children. *Id.* 139, and note. But the wife's equity does not, according to the adjudged cases, attach, except upon that part of her personal property in action which the husband cannot acquire without the assistance of a court of equity. *Id.* 141. And see further, *Id.* 139—143. 1 *White's Eq. Cas.* 305—323. *Id.* 323, Am. ed. note.

The doctrine of the wife's equity seems to be recognized throughout the United States, with the exception of North Carolina. *Id. ibid.*

WIG. Sax. and Germ. In old German law. A bay of the sea, or a river. *Spelman*, citing *B. Rhenan. Rer. Germ.* lib. 3, fol. 217.

A wood or grove. *Spelman*.

WIGREVE. Sax. [from *wig*, a wood, and *reve*, *refa*, an overseer.] In old European law. The overseer of a wood. *Spelman*.

WILL. [L. Fr. *volunt*; Lat. *voluntas*, *ultima voluntas*, *testamentum*.] A disposition of real and personal property, to take effect after the death of the person making it.\* 3 *Kent's Com.* 501.—The legal declaration of a person's mind or intention, respecting the manner in which he *would* have his property or estate disposed of after his death.\* 2 *Bl. Com.* 499. 1 *Jarman on Wills*, (by Perkins,) 1. This definition is founded essentially on that of *testament* in the civil law. See *Testament, Testamentum*.—An instrument in writing, executed in form of law, by which a person makes a disposition of his property, to take effect after his death.

A will, when it operates upon personal property, is sometimes called a *testament*, and when upon real estate, a *devise*; but the more general and the more popular denomination of the instrument, embracing equally real and personal estate, is that of *last will and testament*. 3 *Kent's Com.* 501. Of these several terms it may be observed that "*testament*" is directly derived from the *testamentum* of the civil law, and though formerly distinguished from a will, as importing the appointment of an executor, and as particularly applicable to personal property, is now generally used as synonymous with it. 1 *Steph. Com.* 544.

See *Testament*. Or rather, it may be said to be comparatively disused, except in connection with *will*. See *infra*. "*Devise*" strictly means a disposition of real estate contained in a will, as distinguished from the instrument itself. A will may contain several devises. See *Devise*. "*Last will and testament*" is the formal denomination chiefly used as descriptive of the instrument, either in the will itself, or in other instruments referring to it; or in pleadings, statutes, &c. But the simple term *will* is the one most commonly used in the modern books, and even in statutes, as well as in common parlance, to denote an instrument containing dispositions of property to take effect after death. By the English statutes 7 Will. IV. and 1 Vict. c. 26, the word "*will*" is declared to extend to a testament, to a codicil, and to an appointment by will, or by writing in the nature of a will, in execution of a power. See 1 *Steph. Com.* 545, note. And in New-York, the term *will* is declared by statute to include a *codicil*. 2 *Rev. St.* [68, § 71,] 12, § 78.

WILL, *Estate at*. See *Estate at will*.

WILL. In Scotch practice. That part or clause of a process which contains the mandate or command to the officer. *Bell's Dict. voc. Inhibition*. 7 *Wils. & Shaw's R.* 519, 522.

WINCHESTER, *Statute of*. A statute passed in the 13th year of the reign of Edward I. by which the old Saxon law of police was enforced, with many additional provisions. 2 *Reeves' Hist. Eng. Law*, 163. *Crabb's Hist. Eng. Law*, 189. It was repealed by the statute 7 & 8 Geo. IV. c. 27. See *Constable*.

WINCHESTER MEASURE. The standard measure of England, originally kept at Winchester. 1 *Bl. Com.* 274.

WISBUY, LAWS OF. A code of maritime laws, compiled at Wisbuy, the ancient capital of Gothland in Sweden, towards the close of the thirteenth century; and which, soon after their promulgation, were adopted as laws of the sea, by all the nations of modern Europe. Even in the time of Cleirac, (who published them, with a commentary, in his work entitled *Les Us et Coutumes de la Mer*,) they were still observed in Sweden, Denmark, Flanders, and in the North of Germany. These laws resemble in many respects the laws of Oleron, to which, indeed, according to Cleirac, they were but a supplement, and they were

adopted as the basis of the later collection known as the Laws of the Hanseatic League. 3 *Kent's Com.* 13, and note. 1 *Duer on Ins.* 40, 41. Introd. Disc. Lect. ii. They have been published in the United States, in the Appendix to the first volume of *Peters' Admiralty Decisions*.

WISTA. L. Lat. [Sax. *wyst.*] In old records. A half a hide of land. *Spelman. Cowell.*

WIT, *Wyt, Wyte, Witt.* [Sax. *witan.*] In Saxon, old English and Scotch law. Know; to know. *To wit*; to know. See *To wit*. *Witt ze Ws to haif maid*; Know ye Us to have made. 1 *Pitt. Cr. Trials*, part 1, p. 171. An old charter of King Athelstan to the chapel of St. Wilfred of Rippon, given by Blount in rhyme, commences with this word:

Wyt all that es and es gan,  
Yat ik King Adelstan  
As given als freliþ as I may,  
And to ye Capitel of Seint Wilfrai,  
Of my free devotion,  
Yair pees at Rippon.  
On ilke side the kyrke a mile,  
For all ilk deeds and ylke agyle;  
And within yair Kyrke yate,  
At ye stan yat Grithstole hate.  
Within ye kyrke dore and ya quare,  
Yair have pees for les and mare.  
Ilkan of yis stedes sal have pees  
Of Frodmortel and ils deedes  
Yat yair don is, Tol, Tem,  
With Iron and with Water deme,  
And yat ye land of Seint Wilfrai  
Of alkyn geld fre sal be ay.  
At nai nan at langes me to  
In yair Herpsac sal have at do,  
And for ik will at yai be save  
I will at yai alkyn freedome have:  
And in all thinges be als free  
As hert may thinke or eygh may see.  
At te power of a Kinge  
Masts make free any thyng.  
And my seale have I sat yerto,  
For I will at no Man it undo.

*Monast. Angl.* 1 pag. fol. 172 b.

WITA, *Wyta.* L. Lat. [Sax. *wite*, q. v.] In Saxon law. A fine, or mulct; a penalty; a sum paid by way of punishment for an offence. *Spelman.* See *Wite*, *Wyta*.

WITAN. Sax. In Saxon law. Wise men; persons of information, especially in the laws; the king's advisers; members of the king's council; the optimates, or principal men of the kingdom. 1 *Spence's Chancery*, 11, note. *Id.* 72, 74.

WITE, *Wit, Wyte.* In Saxon law. A fine for an offence; a pecuniary punishment or penalty. Distinguished from *were*,

(q. v.) which answered to the civil damages of modern law. The *wite* was paid to the crown or magistrate, as a punishment for the offence; the *were*, to the injured party, or his relatives, as a satisfaction for the injury. *Bosworth's Anglo-Sax. Dict.* voc. *Were and wite.* *Sedgwick on Damages*, 10, 11, and notes.

An amercement, or amercement. *Co. Litt.* 127 a. A pecuniary punishment imposed upon the lighter classes of offences, which was not fixed, but varied according to the quality of the offence. *Spelman* thus distinguishes *wite* from *were*, making the latter word to signify a fine imposed upon persons guilty of homicide, and other atrocious crimes. *Spelman*, voc. *Wyta.* See *Wyta*.

A freedom or immunity from an amercement. *Co. Litt.* 127 a. *Cowell.*

WITENA DOM. Sax. [from *witan*, wise men, and *dom*, judgment.] In Saxon law. The judgment of the county court, or other court of competent jurisdiction, on the title to property, real or personal. 1 *Spence's Chancery*, 22.

WITENA-GEMOTE, *Wetena-gemote, Gewitena-gemote.* Sax. [from *witan*, wise men, and *gemote*, a meeting.] In Saxon law. An assembly or meeting of the wise men, (*sapientes*), or principal men (*optimates*) of the kingdom; an assembly or council of the more solemn kind, frequently called by the Saxon kings; otherwise termed *micel-synoth*, (q. v.) the great council. 1 *Bl. Com.* 148. 1 *Spence's Chancery*, 73. The superior court of the kingdom, (*curia regis*.) *Id.* 76. 1 *Reeves' Hist. Eng. Law*, 7. See 9 *Co. pref.*

These more solemn assemblies, according to Mr. Spence, appear to have been held in the open air, by public notice or by particular summonses, in or near to some city or populous town; and they are the assemblies which are called *parliaments* by the writers after the Conquest. It appears to have been part of the business of the select council which usually attended the king, to determine when these more solemn councils should be held. On some occasions, when the throne was vacant, they met of their own authority, for the purpose of choosing a sovereign. 1 *Spence's Chancery*, 73, and notes.

WITERDEN, *Witereden.* Sax. [from *wite*, wise or principal men, and *rædan*, council.] In Saxon law. A kind of taxation among the West-Saxons, imposed by

the public council of the kingdom; a subsidy. *Spelman. Munita ab omnibus secularibus servitutibus, necnon regalibus tributis, sive taxationibus, quod nos dicimus witereden*; free of all secular burdens, and also of royal tributes or taxes which we call *witereden*. *Chart. Ethelwulf. apud Malm. de Gest. R.* lib. 1, p. 41, cited *ibid*.

**WITEREDEN.** [*Sax. wite-rædenne.*] In Saxon law. The payment of a *wite* or fine. *Spelman*.

**WITH** [*L. Fr. ove,*] is constantly used in the old books, in the sense of *for*. "Judgment *with* the plaintiff;" "of counsel *with* the defendant." See *Ove*. "He would have argued *with* the lease." *Dyer*, 126 b.

**WITH STRONG HAND.** [*L. Lat. manu forti.*] In pleading. A phrase used in describing a forcible entry in an indictment, and held to be indispensable. *Wharton's Proc. of Indict.* 219, note (e.)

**WITHDRAWING A JUROR.** In practice. The withdrawing of one of the twelve jurors impanelled to try a cause; a consent of parties that one of the jurors shall quit the jury-box, which, by leaving the jury incomplete, necessarily prevents any further proceedings in the cause. The withdrawing of a juror is always by the agreement of the parties, and is frequently done at the recommendation of the judge, where it is doubtful whether the action will lie; and in such case, the consequence is that each party pays his own costs. It is, however, no bar to a future action for the same cause. 2 *Tidd's Pr.* 861, 862. 1 *Arch. Pr.* 196.

**WITHDRAWING RECORD.** In practice. The withdrawing by a plaintiff, of the *nisi prius* or trial record filed in a cause, just before the trial is entered upon, for the purpose of preventing the cause from being tried. This may be done before the jury are sworn, and afterwards, by consent of the defendant's counsel. 2 *Tidd's Pr.* 851. 1 *Arch. Pr.* 189. 3 *Chitt. Gen. Pr.* 870.

**WITHERNAM.** *Sax* and *Eng.* [from *Sax. weder, oder, other, and naam, a taking*; *L. Lat. withernamium.*] In practice. A taking by way of reprisal;\* a taking or a reprisal of other goods, in lieu of those that were formerly taken and eloined or withheld. 2 *Inst.* 141. A reciprocal distress, in lieu of a previous one which has been eloigned. 2 *Bl. Com.* 148.

A *capias in withernam* is a writ which issues in cases where goods distrained have

been eloigned, i. e. carried away, concealed or otherwise withheld, so that they cannot be replevied; commanding the sheriff that he take other goods of the distrainor, in *withernam*, that is, by way of reprisal for the first distress, and as a punishment for withholding it.\* 3 *Bl. Com. ub. sup. Reg. Orig.* 82. *F. N. B.* 69 A. 73 F.

\* \* \* *Withernam* has been sometimes said to be the same with the *Lat. vetitum namium*, and *L. Fr. vee de name*, (qq. v.) and is actually expressed by these terms in some of the books. But this, as Lambard and Lord Coke have shown, is clearly a corruption or mistake; for the import of the terms is widely different. *Vetitum namium* or *vee de name*, was a prohibited taking, or rather the prohibition of a retaking, being the unlawful detention of a distress, by the distrainor, by not suffering it to be replevied by the owner. *Bract. fol.* 155 b. But taking in *withernam* is, as Lord Coke observes, a lawful taking by authority of law, and therefore cannot be termed a taking forbidden, because it is expressly commanded to be done. 2 *Inst.* 140. *Withernamium* was in truth the remedy for *vetitum namium*, and followed immediately after it; and from this close connection of the proceedings, and the similarity in sound between their names, the error no doubt arose of taking the one for the other.

*Withernam* and *vee de name* are both mentioned, and distinguished by their proper names, in the twenty-seventh chapter of Britton, *De prises des avers*, as clearly appears from the following passage. After describing *vee de name* (the withholding of a distress) and the remedy for it by writ of replevin, it is said,—*Et si les bestes soient clos dedens meson ou dedens parkes, ou si eles soient chases hors del counte, ou si le baillife autre desturbaunce trove, tauntost face prendre des bestes le deforcour à la double value come withernam, et cele destresse teigne, sauns lesser par plevine, jesques taunt que la destresse alloigne soit remene.* (And if the beasts be shut up in a house or in a pound, or if they be driven out of the county, or if the bailiff meet with other hindrance [in the execution of the process,] he shall forthwith cause the beasts of the deforcour [the distrainor] to be taken to the double value, as a *withernam*, and shall hold this distress without delivering it by plevin [shall hold it irreplevisable] until the distress eloigned be driven back.) *Britt.* c. 27. This passage is almost a literal

translation of the parallel one in Bracton, but in the latter the word *withernamium* is not used, though the proceeding itself is clearly indicated. *Si autem [averia] inveniri non possunt, eo quod alibi fugata sunt forte, vel extra comitatum in fraudem, et captor terram habuerit in comitatu et catalla, capiat serviens domini regis de averiis illius in duplum, et illa detineat donec averia sic abducta reducantur.* (But if the beasts cannot be found, in consequence of being driven elsewhere or fraudulently taken out of the county, and the distrainer have land and chattels [catals, cattle] in the county, the king's serjeant shall take of those beasts twofold [i. e. two for one] and shall detain them until the beasts which have been so eloiigned be brought back.) *Bract.* fol. 157. In the parallel passage in Fleta, the words *nomine wythernamii* are added after the words *in duplum*. *Fleta*, lib. 2, c. 47, § 10. The word *withernamium* distinctly occurs in the Register. *Reg. Orig.* 79, 82.

**WITHOUT CHILDREN.** See *Sine liberis*.

**WITHOUT DAY.** [L. Lat. *sine die*; L. Fr. *sans jour*.] In practice. Without the appointment of a day to appear again; discharged from further attendance; finally dismissed. See *Sine die*, *Eat inde sine die*.

**WITHOUT IMPEACHMENT OF WASTE.** [L. Lat. *absque impetitione vasti*; L. Fr. *sauns impeschement de wast*.] In conveyancing. A clause frequently inserted in leases for life, where it is intended to give the tenant authority to cut down timber on the land leased, without making himself liable to an action, or to the statutory penalty in such cases. The clause itself strictly signifies, *without liability to suit for waste*. See *Impeachment of waste*. But according to Lord Coke, the tenant, by force of these words, is enabled not only to cut down timber, but to convert it to his own use; and a tenant for life, without impeachment of waste, has a right to the trees the moment they are cut down. 11 *Co.* 82 b. 1 *Term R.* 550. 2 *Crabb's Real Prop.* 72, § 1040. See 1 *Hilliard's Real Prop.* 275. The clause is sometimes more positively expressed, "with full liberty to commit waste." *Id. ibid.* But notwithstanding such a clause, tenants for life will be confined to a reasonable exercise of the right, and courts of equity will always restrain them from committing malicious

waste, to the destruction of the estate. 2 *Crabb's Real Prop.* 73, 74, §§ 1040—1042. 1 *Hilliard's Real Prop.* 275.

**WITHOUT MORE.** [L. Fr. *sans plus*.] Without further words. See *Sans plus*.

**WITHOUT RECOURSE.** [Fr. *sans recours*.] In mercantile law. A clause used in the indorsement of negotiable instruments, where the indorser intends to exempt himself from liability to other parties. 3 *Kent's Com.* 92, 93. Such an indorsement transfers the whole interest, and the clause "without recourse" merely rebuts the indorser's liability to the indorsee and subsequent holder. 5 *Metcalfe's R.* 201. *Story on Bills*, § 214.

**WITHOUT STINT.** Without limit; without any specified number. See *Sans nombre*.

**WITHOUT THIS, THAT.** [L. Lat. *absque hoc quod, sine hoc quod*; L. Fr. *sans ceo que*.] In pleading. Formal words used in pleadings by way of *traverse*, particularly by way of *special traverse*, (q. v.) importing an express denial of some matter of fact alleged in a previous pleading. *Steph. Pl.* 168, 169, 179, 180. *Id.* Appendix, Note (48.) See *Absque hoc*.

**WITNESS.** [Sax. *witnesse*, from *witan*, to know; Lat. *testis*.] A person who knows or sees any thing; one personally present. *Webster*.

In conveyancing. One who sees the execution of an instrument, and subscribes it for the purpose of confirming its authenticity by his testimony. *Id.*

In the law of evidence. A person who gives evidence to a judicial tribunal. *Best on Evid.* 140, § 114.

**WITTEMON.** [Sax. *wituma, weotoma*.] In old European law. Dower. *LL. Burgund.* tit. 69, § 1. *Spelman*.

**WITTESCALCUS.** L. Lat. [from Sax. *wite*, a fine, and *scal*, an attendant.] In old European law. An officer by whom fines were collected; a bailiff. *LL. Burgund.* tit. 76. *Spelman*.

**WLADARIUS.** L. Lat. In old Polish law. A steward, (*villicus*.) *Stat. Poloniæ*, p. 520. *Spelman*.

**WODEGELD.** In old English law. A payment for wood. See *Woodgeld*.

**WOLD.** Sax. [L. Lat. *walda*.] In Englard. A down or campaign ground, hilly and void of wood. *Cowell. Blount*.

**WOLF'S HEAD.** [Sax. *wulves heved, wulves heofod*; L. Lat. *caput lupinum*.] In old English law. A term applied to a

person who had been outlawed, he being said to carry a *wolf's head*; implying that he had forfeited the protection of the law, as a man, and might be destroyed like a wild beast, in case he resisted being taken. See *Caput lupinum*.

WONG, *Wang*. Sax. In old records. A field, (*campus, arvum*.) *Spelman. Cowell*.

WOOD, [Lat. *boscus*; Fr. *bois*,] that is, growing wood, is distinguished from *trees*, in conveyancing. A grant or devise of an interest in *growing wood* is said to convey an interest in the soil itself. Shaw, C. J. 13 *Pick. R.* 44. *Co. Litt.* 4 b. *Shep. Touch.* 94. But it is otherwise with a grant or reservation of *trees*. 11 *Co.* 49 b, 50, *Liford's case*. 1 *Hilliard's Real Prop.* 56, [10.]

If a man seised of divers acres of wood grants to another *omnes boscos suos*, (all his woods,) not only the woods growing upon the land pass, but the land itself. *Co. Litt.* 4 b. Or at least these words pass an exclusive right to the land, so far as is necessary for the support of the trees. 4 *Mass. R.* 268. 2 *Hilliard's Real Prop.* 339, [356.]

WOOD, [Lat. *lignum*,] is held, in some of the old cases, to mean wood cut down or felled, not trees growing, according to the verse,

*Arbor dum crescit, lignum cum crescere nescit.* 1 *Ld. Raym.* 959. *Cro. Jac.* 166. See *Arbor, Lignum*.

WOOD-CORN. In old records. A certain quantity of oats or other *grain*, paid by customary tenants to the lord, for liberty to pick up dead or broken wood. *Cowell*.

WOOD-GELD. [from *wood*, and Sax. *geld*, a payment.] In old English law, Money paid for the liberty of taking wood in a forest. *Spelman. Cowell*.

Immunity from such payment. *Spelman. Co. Litt.* 233 a.

WOOD-MOTE. [from *wood*, and Sax. *mote*, a court.] In forest law. The old name of the court of attachments, otherwise called the forty days' court. *Cowell*. 3 *Bl. Com.* 71.

WOOD-STREET COMPTER. The name of an old prison in London. 11 *Mod.* 50. See *Counter*.

WOOD-WARD. [from *wood*, and Sax. *warde*, guard.] In forest law. A keeper; one whose office was to protect the wood, and who was sworn to present all offences

against vert and venison, at the forest courts. *Cowell. Spelman*.

WOOLSACK. In English practice. The seat of the Lord Chancellor in the House of Lords; so called from its being a large square bag of wool, without back or arms, covered with red cloth. *Brande*.

WORTH, *Weorth*. Sax. In old records. A country house or farm, (*curtis sive habitatio*.) *Spelman. Cowell*.

WOUND. [Lat. *vulnus*; L. Lat. *plaga*; L. Fr. *playe*.] In criminal law. An injury to the person, by which the skin is divided, or its continuity broken. So defined in England, under the statute of 9 Geo. IV. c. 31, s. 12. Lord Lyndhurst, C. B. 6 *C. & P.* 684. By "skin" is said to be meant the whole skin; a separation of the *cuticle*, or upper skin only, is not sufficient to constitute a wound. 8 *C. & P.* 635. See 1 *Russell on Crimes*, 729—731. "In legal medicine, the term *wound* is used in a much more comprehensive sense than in surgery. In the latter, it means strictly a solution of continuity; in the former, injuries of every description that affect either the hard or the soft parts; and accordingly under it are comprehended bruises, contusions, fractures, luxations, &c." 2 *Beck's Med. Jur.* 106. See *Id.* 287, and notes.

WOUNDING. In criminal law. The offence of inflicting a wound. Defined by Blackstone, "an aggravated species of battery, consisting in giving another some dangerous hurt." 3 *Bl. Com.* 121. But the term has had a more specific sense given to it, under recent English statutes. 1 *Russell on Crimes*, 729. See *Wound*.

WORTHIEST OF BLOOD. In the English law of descent. A term applied to males, expressive of the preference given to them over females. See 2 *Bl. Com.* 234—240.

WRECK. An old form of *wreck*, (q. v.)

WRECCUM, or WRECCUM MARIS. L. Lat. In old English law. Wreck; sea-wreck; goods cast ashore by the sea from a wrecked vessel; (*res e naufragio adductæ in terram*.) *Spelman*. 5 *Co.* 106 a, b, *Constable's case*. 2 *Inst.* 167. *Fleta*, lib. 1, c. 20, § 11. Written *wreckum* in Bracton and *Fleta*, *wrectum maris* in the Register. *Bract.* fol. 120. *Fleta*, lib. 1, cc. 43, 44. *Reg. Orig.* 102 b, 126 a. See *Wreck*.

WRECK. [from Sax. *wræc*; L. Fr. *wrek*, *wrekke*; O. Fr. *varech*; L. Lat. *wreccum*,

*wreckum, wractum*; Lat. *naufragium*; Fr. *naufrage, bris, échouement*.] In English law. Goods which, after a shipwreck at sea, are by the sea cast upon the land. 5 Co. 106 b, *Constable's case*. 2 Inst. 167. Goods cast ashore from a wrecked vessel, where no living creature has escaped from the wreck alive; and which are forfeited to the crown, or to persons having the franchise of wreck. Cowell. 1 Crabb's Real Prop. 507, § 656; 509, §§ 658, 659. 1 Bl. Com. 290, 291.

In American law. Goods cast ashore by the sea, and not claimed by the owner within a year, or other specified period; and which, in such case, become the property of the state. 2 Kent's Com. 322. See *Wreckum*.

WRECK, *Wrec*. [L. Lat. *wreccum, wreckum*.] In old English law. Any thing thrown up on the land by the sea, (*maris ejectus*.) Spelman. Lib. Rames. § 95, cited *ibid*. Called in some old charters, *seupierp*, quasi *sea-up-werp*. Spelman. Cowell.

A thing thrown out of a vessel, with the intention of throwing it away, and which is afterwards found; a thing derelict. Bract. fol. 120. See *Wreckum*.

WRECK. See *Shipwreck*.

WRECKFREE, *Wrecfree, Wrecfry*. In old English law. Exempt from the forfeiture of shipwrecked goods and vessels to the king. Cowell.

WRECKUM, *Wreccum*. L. Lat. In old English law. Wreck. A thing thrown out of a ship, without the intention of reclaiming it. *Et sciendum quod wreckum dici poterit, quasi derelictum, ut si quid (navis levandæ causâ,) à nave projectum fuerit ab aliquo, sine animo retinendi vel repetendi, id proprie dici poterit wreckum, cum res projecta habita sit pro derelicta; et si habita sit pro derelicta videri poterit per præsumptiones, ut si liber projectus fuerit, utrum inveniatur clausus vel apertus, cum commodè claudi possit et bene; et sic de similibus.* (And it is to be known that a thing may be called *wreck*, as being derelict, as if any thing be thrown out of a ship by a person, (for the sake of lightening the ship,) without the intention of retaining or reclaiming it, it may be properly called *wreck*, when the thing thrown out is regarded as derelict; and whether it be regarded as derelict may be judged by presumptions, as if a book have been thrown out [such inference may be drawn

from the circumstance] whether it be found shut or open, where it could conveniently be shut; and so of like cases.) Bract. fol. 120. See *Fleta*, lib. 1, c. 43, § 2. This definition of wreck seems to be nearly or quite that of *jettison*, (q. v.)

Goods or other things cast ashore by the sea from a wrecked vessel. This was regarded as the proper sense of the word. *Item magis propriè dici poterit wreckum, si navis frangetur, et de qua nullus vivus evaserit, et maxime si dominus rerum submersus fuerit, et quicquid inde ad terram venerit erit domini regis, nec aliquis alius aliquid à domino rege inde vindicare poterit vel habere, quamvis prope littus maris prædia possederit, nisi de wrecko habendo speciali gaudeat privilegio. Et quod hujusmodi dici debeant wreckum verum est, nisi ita sit quod verus dominus aliunde veniens, per certa indicia et signa, docuerit res esse suas; ut si canis vivus inveniatur, et constare possit quod talis sit dominus illius canis et illorum rerum. Et eodem modo si certa signa apposita fuerint mercibus et aliis rebus.* (Also, it may with more propriety be called *wreck*, if the ship be broken, and no living thing has escaped therefrom, and especially, if the owner of the property have been drowned, and whatever comes therefrom to land, shall be the king's, nor can any one else claim of the king any thing therefrom, or have it, though he may be the owner of lands near the seashore, unless he enjoy the special privilege of having wreck. And that things of this kind ought to be called *wreck*, is true, unless it so happen that the true owner, coming from another quarter, shall, by certain marks and signs, show the thing to be his property; as if a dog be found alive, and it can be evident that such person is the owner of that dog, and of those things. And in the same way, if certain marks have been put upon merchandize and other things.) Bract. fol. 120.

\* \* The foregoing passage of Bracton was written before the statute of Westminster the First, in which the law of wreck is laid down in the following terms: *De wreck de mere est accorde que la ou home, chien, ou chat escape vive hors de la neefe, la neefe ou batell', ou nul rien que la eins fuit ne soit wreck, &c.* (Concerning wreck of the sea, it is agreed that where a man, a dog, or a cat escape alive out of the ship, the ship or boat or any thing in them shall not be adjudged *wreck*, but the

goods shall be saved and kept, &c. So that, if any sue for those goods, and afterwards prove that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay. And if not, they shall remain to the king.) *Stat. Westm.* 1, c. 4. See *Fleta*, lib. 1, c. 44, § 2. These two passages have often been quoted together, that of Bracton being relied on by those who have contended for a broader view of the law of wreck than seems to be authorized by the letter of the statute. Both mention the escape of a *live animal* from the vessel, as a circumstance which would take from the goods the character of wreck; the statute declaring it to be the absolute criterion by which it was to be determined whether the goods were wreck or not; but Bracton mentioning it only as a *means of proof* by which the owner might show his property. Bracton, however, it will be seen, goes farther than the statute, laying down the doctrine, in the important clause with which the passage quoted from him concludes, that if the owner could prove his property by *marks upon the goods*, they were not to be considered as wreck. In the case of *Hamilton and Smith v. Davis*, (5 *Burr.* 2732,) this clause was relied upon by the plaintiffs' counsel as an authority to show that the goods were *no wreck*, there being, in that case, marks apparent upon them. The defendant's counsel rested upon the strict letter of the statute, and contended that as no *living creature* had come from the ship to the shore, the goods were legally *wreck*; arguing, also, that Bracton had mis-stated the law, and was unsupported by any other writer, and was contradicted by the *Mirror*, ancient charters and ancient acts of parliament. Lord Mansfield, in delivering the opinion of the court, adopted the more liberal view of Bracton, which he considered as according with the common law before the statute, (the statute itself having always been recognized as declaratory of the common law.) See 2 *Kent's Com.* 322. It will be observed that Blackstone is quoted by the defendant's counsel in this case, as favoring the stricter interpretation of the statute, in opposition to Bracton. But, in the editions of Blackstone since published, the decision in this very case is quoted with approval, as settling the doctrine on the more liberal basis. 1 *Bl. Com.* 291, 292. As to the accordance of the Ameri-

can law with Bracton, see 2 *Kent's Com.* 322.

Lord Mansfield, in the case above quoted, observed, in allusion to the language of the statute, and the construction of it contended for on the part of the defendant, that there was no ground for a forfeiture of the goods upon the distinction between a man or other animal coming to shore *alive*, or not alive; that the coming to shore of a dog or a cat alive, could be no better proof than if they should come ashore dead; that the escaping *alive* made no sort of difference; and that if the owner of the dog, or cat, or other animal was known, the presumption of the goods belonging to the same person would be equally strong, whether the animal was *alive* or dead. That an importance, however, was attached to the circumstance of *life* in the animal, in such cases, seems clear, not only from the language of the statute, but from the express words of Bracton, who enumerates it as one (and, indeed, mentions no other) of the *indicia* and *signa* by which the owner might prove his property, supposing there were no marks upon the goods themselves. *Si canis vivus inveniatur*, if the owner's dog were found alive on the shore, the behavior of the animal towards his master would furnish in itself a natural *indicium* of the greatest importance in identifying him, so that *constare possit quod talis sit dominus illius canis*, and then the presumption followed, that *the owner of the dog* was the owner of *the goods that came ashore with the dog*. Such, at least, seems to be the reasonable interpretation of the passage, otherwise it is difficult to explain why the *canis vivus* is so prominently mentioned by this author.

It may be observed in addition, that in a writ in the Register, on the subject of wreck, the escape of a *live animal* from the ship is expressly made a criterion whether the goods washed ashore were forfeitable as wreck; the persons to whom it is directed being instructed to inquire whether any person escaped alive from the ship to land or not, and to award the goods to the claimants on their making proof of property, provided, however, some animal have escaped *alive* from the said ship, (*dum tamen aliquod animal à dicta navi vivum evaserit*.) *Reg. Orig.* 126.

WRECTUM. L. Lat. In old English law. Wreck. *Habere consueverunt wrec-*

*tum maris infra præinctum manerii prædicti* : have been accustomed to have wreck of the sea, within the precinct of the manor aforesaid. *Reg. Orig.* 102 b. *Ac si wrec-tum fuissent, ceperunt et asportaverunt* ; took and carried away, as if they were wreck. *Id.* 126.

WREK, *Wreke, Wrekke*. L. Fr. Wreck. *De wrek de meer trove* ; of wreck of the sea found. *Britt.* c. 17, 33. *De wrekkes de meer trove*. *Id.* c. 29.

WRIT. [from Sax. *writan*, to write ; Lat. *breve* ; L. Fr. *brefe, bref, briefe, briefue* ; Scotch, *brieve*.] In practice. A judicial instrument by which a court commands some act to be done by the person to whom it is directed. An instrument in writing, in an epistolary form, running in the name of the sovereign of a state, and issued out of a court of justice under seal, either as the commencement of an action or during its progress, directed to a sheriff or other ministerial officer, or to the party intended to be bound by it, and commanding some act therein mentioned to be done at, or within a certain time specified. Writs directed to officers always contain a command to return them on a certain day, called the *return* or *return day*, (q. v.) and all writs are usually witnessed or *tested* in the name of the chief justice or principal judge of the court out of which they are issued. The term *writ* is supposed by Mr. Reeves to have been derived from the fact of these *formulae* having always been expressed in *writing*, being in this respect distinguished from all the other proceedings in the ancient action, which were conducted orally. 1 *Reeves' Hist. Eng. Law*, 95. 2 *Id.* 266.

\* \* The distinction of writs into *original* and *judicial*, was a fundamental and highly important one in old English law and practice. *Original* writs were mandatory letters, (so termed from their epistolary form,) issuing out of the court of chancery under the great seal, constituting the foundation of actions, and being the first proceeding in them. *Judicial* writs were those which issued after the action had been thus commenced, and they were issued out of the court in which it was pending, and under the seal of such court. 3 *Bl. Com.* 273, 282. See *Original writ*, *Judicial writ*. The *Register of Writs*, the great repository of these *formulae*, is divided into two parts ; the *Register of Original writs*, and the *Register of Judicial writs*. In modern times, original writs have fallen

into disuse, and most of them have been expressly abolished in England. And indeed the proceeding *by writ*, in general, seems to have been superseded in a considerable degree by other judicial instruments, though none of these appear to equal it in point of expressiveness and formal effect.

WRIT. [Lat. *breve, litera, literæ*.] In old English law. An instrument in the form of a letter ; a letter or letters of attorney, (*literæ procuratoriæ*.) This is a very ancient sense of the word. Bracton observes that where a person had a charter or deed of land, and a letter of attorney from the grantor to deliver seisin, it was said in English, *hee had bothe writ and charter*. *Bract.* fol. 40. See *Breve*.

Letters patent and letters close are otherwise called *writs* patent and *writs* close. 2 *Bl. Com.* 346.

WRIT. In Scotch law. A writing ; an instrument in writing, as a deed, bond, contract, &c. 2 *Forbes' Inst.* part 2, p. 175—179. *Handwrit* is used for *hand-writing*. 2 *How. St. Trials*, 715.

WRIT OF ENTRY. See *Entry*, *writ of*.

WRIT OF ERROR. [L. Lat. *breve de errore* ; L. Fr. *brefe d'error*.] In practice. A writ to correct error ; called at length in the old books, *breve de errore corrigendo*, a writ about correcting error ; the abbreviation of which (*breve de errore*) has been literally translated, *writ of error*. Sometimes simply termed *error*. Defined by Lord Coke to be a writ which "lieth where a man is grieved by any error in the foundation, proceeding, judgment or execution [of a suit,] and thereupon it is called *breve de errore corrigendo*. But without a judgment, or an award in nature of a judgment no writ of error doth lie ; for the words of the writ be, *si judicium redditum sit*, [if judgment be given ;] and that judgment must regularly be given by judges of record, and in a court of record, and not by any other inferior judges in base courts ; for thereupon a writ of false judgment doth lie." *Co. Litt.* 288 b. See *Error*, *writ of*.

WRIT OF INQUIRY. See *Inquiry*, *writ of*.

WRIT OF RIGHT. [L. Lat. *breve de recto* ; L. Fr. *brefe de droit*.] In old practice. A writ which lay to recover lands in fee simple, unjustly withheld from the true proprietor ; the great and final remedy for the recovery of the *right of property*, (*jus*

*proprietas*,) or mere right, (*jus merum*), as distinguished from the right of possession. 3 *Bl. Com.* 194, 191. *Roscoe's Real Act.* 19. It was in its nature the highest writ in the law, and lay only of an estate in fee simple, and not for him who had a less estate. It lay concurrently with all other real actions, in which an estate of fee simple might be recovered; and it also lay after them, being, as it were, an appeal to the mere right, when judgment had been had as to the possession in an inferior possessory action. 3 *Bl. Com.* 193.

Writs of right have been abolished in England, by statute 3 and 4 Will. IV. c. 27. 3 *Steph. Com.* 492. They have been abolished also in some of the United States, and are, in general, disused in practice. See 4 *Kent's Com.* 70, note. But they may still be used as process in the Circuit Courts of the United States. 16 *Howard's R.* 354, 365.

To WRITE. [Sax. *writan*; Lat. *scribere*.] To express ideas by letters visible to the eye. Kent, C. 14 *Johns. R.* 491. To impress letters upon paper or parchment with pen and ink, with a pencil, or with any other instrument or material which can make them permanently visible.\* The term includes the impression of letters with types and ink. See *Writing*.

WRITER TO THE SIGNET. In Scotch law. An officer nearly corresponding to an attorney at law, in English and American practice. Writers to the signet, called also *clerks to the signet*, derive their name from the circumstance that they were anciently clerks in the office of the Secretary of State, by whom writs were prepared and issued under the royal *signet* or seal, and when the signet became employed in judicial proceedings, they obtained a monopoly of the privileges of acting as agents or attorneys before the Court of Session. *Brande, voc. Signet*.

WRITING. [Lat. *scriptura*; L. Fr. *escript*.] The expression of ideas by letters visible to the eye. Kent, C. 14 *Johns. R.* 491.—The outward, visible form in which the contract, will or direction of a person is expressed; and which in many cases constitutes an essential part of it.\* Termed in the old books, one of the *garments* (L. Fr. *garnements*, L. Lat. *vestimenta*,) of a contract or obligation. *Bract*. fol. 99. *Britt.* c. 28.

*Writing* is an essential requisite to the validity of a deed or conveyance of land,

and to many other contracts, such as bonds, bills, notes, leases in certain cases, and even the informal memoranda required by the statute of frauds. 2 *Bl. Com.* 297. 4 *Kent's Com.* 450—452. Writing constitutes, also, an essential part of nearly all judicial proceedings. But *writing* is not, in these cases, confined to the ordinary and popular signification of the term,—the formation of letters by *pen and ink*. The mode or manner of impressing the letters is no part of the substance or definition of writing. Kent, C. 14 *Johns. R.* 491. The law has gone so far as to prescribe the material *upon which* the writing is to be made; and hence a deed is required to be written on *paper* or *parchment*, and not on wood or stone. This, it is observed, was for the sake of durability and safety, and is all the regulation that the law has prescribed. But the instrument, or the material *by which* letters are to be impressed on paper or parchment, has never yet been defined. Kent, C. *ub. sup.* Hence *printing* is *writing*, in the legal sense of the term, and an instrument the words of which are printed either wholly or in part, is equally valid with an instrument written with a pen. 2 *Bl. Com.* 297. Even writing with a *lead pencil*, (liable, as it is, to be effaced,) has been held sufficient in many cases. See 14 *Johns. R.* 491. See *Signature*. A promissory note in pencil is valid while legible. 14 *Texas R.* 329.

WRITING. [Lat. *scriptum*; L. Fr. *escript*.] A thing written; a written instrument or document. See *Scriptum*. *Best on Evid.* 239—241.

WRITING OBLIGATORY. [L. Lat. *scriptum obligatorium*.] The technical name by which a *bond* is described in pleading. See *Bond*.

WRITTEN LAW. [Lat. *jus scriptum*, *lex scripta*; Gr. νόμος ἑγγράφος.] One of the two leading divisions of the Roman law, comprising the *leges*, *plebiscita*, *senatus-consulta*, *principum placita*, *magistratum edicta*, and *responsa prudentum*. *Inst.* 1. 2. 3.

Statute law; law deriving its force from express legislative enactment. 1 *Bl. Com.* 62, 85. See *Lex scripta*.

WRONG. [L. Fr. *tort*; Lat. *injuria*.] The violation of a right, or of law, either by a positive act, or negatively, by withholding from another that which is his due, or neglecting to comply with some express requirement of law; an injury. See *Injuria*.

Literally, *wrung*, or twisted; the opposite of *right*, which also literally means *straight*. The Fr. *tort*, (from Lat. *tortum*, twisted, from *torquere*,) has precisely the same meaning.

The idea of *rights* naturally suggests the correlative one of *wrongs*; for every right is capable of being violated. A right to receive payment for goods sold (for example,) implies a wrong on the part of him who owes, but withholds the price; a right to live in personal security, a wrong on the part of him who commits personal violence. And, therefore, while in a general point of view the law is intended for the establishment and maintenance of *rights*, we find it, on closer examination, to be dealing both with rights and wrongs. It first fixes the character and definition of rights, and then, with a view to their effectual security, proceeds to define wrongs, and to devise the means by which the latter shall be prevented or redressed. 1 *Steph. Com.* 126.

A private wrong, is otherwise termed a civil injury; a public wrong, a crime, or misdemeanor. See *Private wrongs*, *Public wrongs*.

**WRONGOUS**, *Wrangous*. In Scotch law. Wrongful; unlawful; as *wrongous* imprisonment. *Ersk. Pr. b.* 4, tit. 4, § 25.

**WULTAVA**, *Wulitava*. L. Lat. In old European law. A disfiguring of the face. *Addit. ad L. Frison.* tit. 3, § 16. *Spelman*.

**WULVESHEVED**, *Wulfesheofod*. Sax. [from *wulfe*, wolf, and *heofod*, head.] In Saxon law. Wolf's head; a term applied to an outlaw. *Si vero postea repertus fuerit, et retineri possit, vivus regi reddetur, vel caput ejus, si se defenderit.* *Lupinum enim gerit caput, quod Anglicè Wulvesheved dicitur.* (But if he be afterwards found, and can be taken, he shall be brought to the king alive, or his head, if he defend himself. For he carries a wolf's head, which is called in English *wulfesheved*.) *LL. Edw. Conf. c.* 7, [8.] *Spelman*.

**WURTH**. Sax. In Saxon law. Worthy; competent; capable. *Atheswurthe*; worthy of oath; admissible or competent to be sworn. *Spelman*. See *Othesworthe*.

**WYTA**, *Wita*. L. Lat. In Saxon and old English law. A fine, or mullet; a wite, (q. v.) *Ex his placitis, quædam emendantur centum solidis; quædam wera, quædam wyta; quædam emendari non possunt.* (Of these pleas, some may be made amends for, [satisfied or discharged,] by payment

of a hundred shillings; some by a *were*, some by a *wite*; some cannot be made amends for.) *LL. Hen. I. c.* 13. *Spelman*, voc. *Wita*.

**WYTE**. Sax. In old English law. Acquittance or immunity from amercement. Used in the compound words, *friendwyte*, *ferdwyte*, *blodwyte*, *wardwyte* and *hengwyte*, (qq. v.) *Fleta*, lib. 1, c. 47, §§ 15, 16, 17.

## X.

**X**. A contraction of the word *extra*, used in citing that part of the canon law called Gregory's Decretals, thus: cap. 8, X. *de regulis juris*.

**ΧΑΙΡΕΙΝ**, *χαῖρειν*, Gr. [Lat. *salve*, *salutem*.] Hail; health; greeting. A word used in Greek conveyances, corresponding with the Latin *salutem*, (q. v.) *Dig.* 8. 3. 37. *Id.* 31. 34. 1.

**XENODOCHIUM**. Græco-Lat. [from Gr. *ξενδοχίω*, from *ξένος*, a guest, and *δέχομαι*, to receive.] In the civil and old English law. An inn allowed by public license, for the entertainment of strangers, and other guests. *Calv. Lex. Cowell*.

A hospital; a place where sick and infirm persons are taken care of. *Cowell*. 10 *Co.* pref. In the civil law, the house itself was called *xenon* (*ξένων*;) the person who had charge of it, *xenodochus*, (*ξενδοχος*.) *Cod.* 1. 3. 33. *Id.* 1. 3. 46. 1. *Nov.* 7, epilog.

**XEURTE**. L. Fr. A corruption of *seurte*, or *suerte*, (q. v.) *Kelham*.

**ΧΡΗΣΙΣ**, *χρησις*. Gr. [Lat. *usus*.] In the civil law. Use. *Calv. Lex.* See *Usus*.

## Y.

**Y** is constantly used for *th* in old English and Scotch records. The use of *ye* or *y<sup>e</sup>* for *the*, is a familiar illustration of this practice.

**YA ET NAY**. In old records. Mere assertion and denial, without oath. *Quod homines sui* (Ripponienses) *sint credendi per suum Ya et per suum Nay, in omnibus querelis et curiis*; that his men (of Rippon) may be believed on their *yea* and on their *nay*, in all complaints and courts. *Chart. Athelstan. Reg.* 1 *Mon. Angl.* 173 a. *Cowell. Blount*.

**YALEMAINES**, *Jalemiens*. L. Fr. At least; nevertheless; however. *Kelham. Plowd.* 219.

**YARD**. [from Sax. *gyrdan*, to enclose; Lat. *curtis*.] An enclosed space or area,

generally attached to a dwelling-house. A common term in deeds. 1 *Chitt. Gen. Pr.* 176.

**YARD-LAND.** [Sax. *gyrdland*; L. Lat. *virgata terræ*.] In old English law. A measure of land of uncertain quantity, varying from fifteen to forty acres. *Spelman*, voc. *Virgata terræ*.

**YAUE, Yave.** L. Fr. Corrupted forms of *eaue* and *eue*, (qq. v.) following the pronunciation. *Kelham*.

**YCEL.** L. Fr. It; this; the same. *En ycel*; in it. *L. Fr. Dict. Kelham*.

**YCEMENT.** L. Fr. Thus; in like manner. *Kelham*.

**YCESTES.** L. Fr. These. *Kelham*.

**YCEUX, Yceaux.** L. Fr. Those; them. *Kelham*.

**YCONOMUS, Oeconomus.** L. Lat. In old records. An advocate or defender; a patron. *Cowell*.

**YEAR.** [O. Sc. *zeir*; Sax. *gear*; Lat. *annus*; L. Fr. *an, ann*.] The period of three hundred and sixty-five days, or twelve calendar months. 2 *Bl. Com.* 140. *Co. Litt.* 135. *Cro. Jac.* 166. 1 *N. Y. Rev. St.* [606,] 615, § 3. By the statute 21 Hen. III. the increasing day in the leap-year, together with the preceding day, were directed to be accounted for one day; and this rule has continued to be observed ever since. 2 *Bl. Com.* 141. 1 *N. Y. Rev. St. ub. sup.*

**YEAR AND DAY.** [O. Sc. *zeir and daie*; Germ. *jar und tag*; L. Lat. *annus et dies*; L. Fr. *an et jour*.] A period of time limited by law for many purposes, and which in some cases determines a right, in other works a prescription. Thus, wreck and estrays become the property of the crown or state, unless claimed by the owner within a year and a day. 1 *Bl. Com.* 292, 297. 2 *Kent's Com.* 359, 360. So, in criminal law, in order to make the killing of a person murder, it is requisite that the party die within a year and a day after the stroke received, or cause of death administered. 4 *Bl. Com.* 197, 306. *Co. Litt.* 254 b. So, in practice, execution, according to the English law, cannot be issued after a year and a day from the time of perfecting judgment, without a *scire facias*. 2 *Tidd's Pr.* 1102. *Arch. N. Pract.* 566. So, in admiralty law, a claim to property captured as prize must be interposed within a year and a day, otherwise condemnation follows as of course. 2 *Gallison's R.* 386, 388.

In the old law of England, the period of a year and a day was allowed or prescribed for other purposes; as for making claim upon a fine or final judgment in a writ of right, and for bringing an appeal of death by a wife or heir. *Co. Litt.* 254 b. Protections were allowed but for a year and a day, and if a villein remained in ancient demesne a year and a day, he was privileged. *Id. ibid.*

In the early maritime ordinances of France, in the laws of Oleron and in the *Consolato del Mare*, the same period is fixed as the limitation of right in cases of shipwreck. *Consol. del Mare*, ch. 252. *Les Us et Coutumes de la Mer*, 53, 54. *Laws of Oleron*, 30. *Ord. Mar.* liv. 4, tit. 9, art. 24. And this was in accordance with the civil law. *Cod. de Naufragiis*, lib. xi. tit. 5, l. 2. *Peckius ad Rem Naut.* 889. Story, J. 2 *Gallison's R.* 388.

In the Books of Feuds, the laws of the Lombards, and the Formularies of Lindenberg, the same period is prescribed in the case of forfeitures, warranties, &c. and *Spelman* considers it to be essentially of German origin. *Gloss. voc. Annus et dies*.

The *day*, in this period, is in modern law the ordinary day of twenty-four hours. In the German law of the middle ages, however, it meant a period of six weeks. *Spelman* quotes an old German Glossary that *Jar und tag ist sechs wochen und ein jar*; Year and day is six weeks and a year. See *Heineccius De præscriptione annali juris Lubecensis à jure communi diversa*, (Opera Minora, Syll. I. Exerc. 26.) It is generally supposed to have been added to the year in order to remove any doubt as to the completion of the year by inclusive or exclusive computation of the first or last day. 2 *Chitt. Gen. Pr.* 107, citing *Palmer's Pr. Lords*, 115, note. Mr. Erskine observes that "a day is adjoined to the year, in *majorẽm evidentiã*, that it may clearly appear that the year itself is elapsed." *Ersk. Pr.* b. 1, tit. 6, § 22. *Bell's Dict.* And see 2 *Gallison's R.* 388, 389, note.

**YEAR-BOOKS.** The oldest English reports extant, beginning with the reign of Edward II. and ending with the reign of Henry VIII. They derive their name from the circumstance of having been *annually* published, and are called by old law writers "books of the years and terms," or "books of the terms and years." 1 *Bl. Com.* 72. *Co. Litt.* 115 b. *Doct. & Stud. Dial.* 1, ch. 9. 2 *Reeves' Hist. Eng. Law*, 357. They

consist of eleven parts or volumes, written in Law French, and extend over a period of nearly two hundred years. The series, however, is in some parts broken, and many years are found without a single report. Thus, in the reign of Edward III. the 11th to the 16th, the 19th to the 20th, and the 31st to the 37th are without a report. The case is the same during the whole reign of Richard II. and the 3d, 4th and 6th years of Henry V.; the 5th, 6th, 13th, 15th, 16th, 17th, 23d, 24th, 25th, 26th and 29th of Henry VI.; the 17th, 18th and 19th of Henry VII.; and the 1st to the 12th, the 15th, 16th, 17th, 20th to the 25th, and the 28th to the end of the reign of Henry VIII. Many of the omitted cases are, however, to be found in the Abridgments of Statham, Brooke and Fitzherbert, as also in the reports of Dyer, Jenkins, Keilway and Benloe. The use of the Year Books was indeed superseded in a great degree by the abridgments just named, and in modern law they are rarely referred to. But they are still regarded as authority, and have been followed in some recent English cases. See 1 *B. & C.* 410. 14 *Mees. & W.* 589. 3 *Man. Gr. & Scott*, 51, arg.

**YEAR, DAY AND WASTE.** [L. Lat. *annus, dies et vastum*; L. Fr. *an, jour et wast*.] In English law. A privilege or prerogative of the crown to have the lands and tenements belonging in fee simple to persons attainted for murder, for a year and a day, and to commit waste therein at pleasure. 4 *Steph. Com.* 450. 4 *Bl. Com.* 285.

**YEME.** In old records. Winter; a corruption of the Lat. *hieme*. *Reddendo—ad festum S. Martini*, in yeme; rendering at the feast of St. Martin, in winter. *Cowell*. Kelham gives it as a law French word. *Yemis* (for *hiemis*) occurs in *Fleta*. *Lib.* 2, c. 73, §§ 16, 18.

**YEMER.** L. Fr. [from Lat. *hiemare*.] To winter. *Kelham*.

**YEOMAN, Yoman, Yeman.** [from Sax. *geman*, common.] In English law. A commoner; a freeholder under the rank of gentleman. *Cowell*. *Camd. Brit.* 105. A man who has free land of forty shillings by the year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is *probus et legalis homo*. 1 *Bl. Com.* 406, 407. 2 *Inst.* 668. 3 *Steph. Com.* 16.

This term is occasionally used in Ameri-

can law, in the description of persons in legal instruments, but without any definite meaning. The fictitious bail, John Doe and Richard Roe, are generally described as *yeomen*.

**YEOVEN, Yeven, Yeuen.** O. Eng. In old records. Given. "*Yeoven*, (given,) the day and year first above written." *Cowell*. The Dictum de Kenilworth concludes, "*Yeoven* and proclaimed in the castle of Kenilworth, the day before the Calends of Novemb. Anno 1256." *Id.* The famous bull of Pope Gregory against Wycliffe ends with these words: "*Yeuen* at Rome, at S. Marie's the greater, xj Kalend of June," &c. *Cowell* supposes it to be a corruption of the Sax. *geofian*, to give.

**YEULX, Yeux, Yex, Yes.** L. Fr. Eyes. *Kelham*.

**YIELD.** [Lat. *reddere, cedere*.] To give as claimed of right; to resign; to give up; to surrender to; to give way; to give place to. *Webster*, arg. 1 *Cushing's R.* 405.

**YIELDING AND PAYING.** In conveyancing. The initial words of that clause in leases, in which the rent to be paid by the lessee is mentioned and reserved. Corresponding to the *reddendum* or *reddendo*, (qq. v.) of old conveyancing. *Cowell* and Blount suppose "yielding" to be a corruption of the Sax. *geldan*, or *gyldan*, to pay.

The words "yielding and paying" have been held to constitute an implied covenant, and not to bind the lessee after assignment of the lease. 9 *Vermont R.* 191.

**YINGEMAN.** A word occurring in the laws of Henry I. (c. 16) which Spelman thinks might be a mistake for Ynglishman, or Englishman.

**YL.** L. Fr. He; it. A corruption of *il*. *Yl semble*; it seems. *Kelham*.

**YO, Joe.** L. Fr. Water. *Kelham*. A corruption of *eau*, or *ewe*.

**YORK, Custom of.** A custom of the province of York in England, by which the effects of an intestate, after payment of his debts, are in general divided according to the ancient universal doctrine of the *pars rationabilis*. 2 *Bl. Com.* 518. 2 *Steph. Com.* 254.

**YORK, Statute of.** An important English statute passed at the city of York, in the twelfth year of Edward II. containing provisions on the subject of attorneys, witnesses, the taking of inquests by *nisi prius*, &c. 2 *Reeves' Hist. Eng. Law*, 299—302. *Crabb's Hist.* 203.

‘ΥΠΟΒΟΛΟΝ, ‘Υποβολον. Gr. [from ‘υποβάλλειν,

to add a less to a greater.] In the civil law. An addition to a woman's dowry, (*incrementum dotis*.) *Calv. Lex.* See *Hypobolon*.

ΥΠΟΘΗΚΗ, 'Υποθήκη. Gr. [from ὑποτιθέναι, to put under.] In the civil law. A kind of pledge in which the possession of the thing pledged remained with the debtor. *Calv. Lex.* See *Hypotheca*.

YRELOND. In old English law. Ireland. *Le def' fuist un marchand D'yrelo'd*; the defendant was a merchant of Ireland. *Yearb. T. 5 Edw. III. 4.*

YVER, *Yvre, Yverne*. L. Fr. Winter. *Kelham*.

YVERNAGIUM. L. Lat. [from Fr. *yverne*, winter.] In old records. Winterseedness; season for sowing corn, [grain.] *Cowell. Blount. Inbladatio yuernagii. Fleta*, lib. 2, c. 41, § 1.

YVERNAIL BLE. L. Fr. Winter grain. *Kelham*.

## Z.

Z is frequently used for *y*, in old English and Scotch records. See *infra*.

ZABULUM. L. Lat. In old records. Coarse sand or gravel. *Blount. See Sabulo*.

ZARDE, *Zaird*. O. Sc. Yard. *Skene de Verb. Signif.*

ZE. O. Sc. Ye. *Skene de Verb. Sign. voc. Homagium*.

ZEIR. O. Sc. Year. "*Zeire* and day." Act A. D. 1594, c. 226. *Bell's Dict. voc. Houses*.

ZELDE. O. Sc. A gift or donation. *Skene de Verb. Sign. voc. Herezelda*.

ZOUNG. O. Sc. Young. 1 *How. St. Trials*, 915.

ZOUR. O. Sc. Your. *Skene de Verb. Sign. voc. Homagium*.

ZOW, *Zowe*. O. Sc. and O. Eng. You. *Skene de Verb. Sign. voc. Homagium*. 1 *How. St. Trials*, 154. See *To wit*.

ZUCARIUM. L. Lat. In old English law. Sugar. *Fleta*, lib. 2, c. 12, § 4.

ZUCHE. [L. Lat. *zucheus*; L. Fr. *souche*.] In old records. A withered or dry stock or stub of a tree. *Cowell. Blount*.

ZYGOCEPHALUM. Græco-Lat. [Gr. ζυγοκεφαλον, from ζυγον, a yoke, and κεφαλή, head.] In the civil law. A measure or quantity of land. *Nov. 17, c. 8*. As much land as a yoke of oxen could plough in a day. *Calv. Lex*.

ZYGOSTATES. Græco-Lat. [Lat. *libripens*.] In the civil law. A weigher; an officer who held or looked to the balance, in weighing money between buyer and seller; an officer appointed to determine controversies about the weight of money. *Spelman*.

ZYTHUM. Lat. A liquor or beverage made of wheat or barley. *Dig. 33. 6. 9, pr.*

A GLOSSARY  
OF LATIN  
NAMES OF PLACES.



# A GLOSSARY

OF

## ANCIENT LATIN NAMES OF PLACES IN ENGLAND, SCOTLAND, WALES AND IRELAND.

TAKEN FROM THE APPENDIX TO COWELL'S INTERPRETER, WITH CORRECTIONS AND ADDITIONS.

### A.

ABALLABA, <i>Applebeia</i> . Appleby in Westmoreland.	ALANNIUS. The river Avon in Wiltshire.
ABBANDUNUM, <i>Abendonia</i> , <i>Abbondonia</i> . Abington in Berkshire.	ALATA CASTRA, <i>Alatum Castrum</i> . Edinburgh. <i>L. Lat. Dict.</i>
ABERDONA, <i>Aberdonia</i> . Aberdeen.	ALAUNA. Alnwick in Northumberland. <i>L. Lat. Dict.</i>
ABLATO BULGIO. Bulness or Bolness in Cumberland. Now Bowness.	ALAUNICUS PORTUS. Milford Haven.
ABONE, <i>Abonis</i> . Avington or Aventon in Gloucestershire.	ALAUNODUNUM. Maidenhead in Berkshire.
ABREVICUM. Berwick on Tweed.	ALAUNUS, <i>Alanus</i> . The river Alne in Northumberland.
ABUM, <i>Abus Æstuarium</i> . The river Humber in Yorkshire.	ALBUM MONASTERIUM. Whitchurch in Shropshire.
ACEMANNI CASTRA. Bath.	ALECTUM, <i>Allectum</i> . Dundee. <i>L. Lat. Dict.</i>
ACHELANDA. Bishop's Auckland in the county of Durham.	ALENUS. The river Alen in Dorsetshire, and another in Denbighshire. The river Alne in Warwickshire.
ADELINGIA. Athelney in Somersetshire.	ALION, <i>Alione</i> , <i>Alone</i> . Lancaster. Whitby Castle in Cumberland.
AD-LAPIDEM. Stoneham in Hampshire.	ALONE. The river Aln in Northumberland.
AD-PONTEM. Pawnton in Lincolnshire.	AMBOGIANNA. Ambleside in Westmoreland.
ADROS, <i>Andros</i> , <i>Andrium</i> . Bardsey Island, between Wales and Ireland.	AMBROSII BURGUS. Amesbury in Wiltshire.
ADURNI PORTUS. Ederington in Sussex.	ANDERIDA. Newenden in Kent.
ÆBUDÆ. The Hebrides Islands.	ANDOVERA. Andover in Hampshire.
ÆGLESBURGUS. Aylesbury in Buckinghamshire. <i>L. Lat. Dict.</i>	ANGLESEGA, MONA. Anglesey island.
ÆTONA. Eaton in Buckinghamshire.	ANGUILLARIA INSULA. The isle of Ely.
AGER MARIDUNENSIS. Caermarthen-shire.	

- ANGUILLARIUM MONASTERIUM. The city of Ely in Cambridgeshire.  
 ANTIVESTÆUM. The Land's End.  
 APIACUM, *Epiacum*. Pap-Castle in Cumberland.  
 AQUÆ CALIDÆ, *Aquæ Solis*. Bath city in Somersetshire.  
 AQUÆDUNENSIS SALTUS. Waterdon.  
 AQUÆVADENSIS PONS. Eiford.  
 AQUILÆDUNUM. Hoxton. Eagles-town.  
 ARBEIA. Ireby in Cumberland.  
 ARGATHALIA. Argyleshire. *L. Lat. Dict.*  
 ARICONIUM. Kenchester near Hertford.  
 ARUNDELLÆ, *Arundellum*, *Aruntina vallis*. Arundel in Sussex.  
 ARUNDINIS VADUM. Redbridge in Hampshire.  
 ARUNUS. The river Arun in Sussex.  
 ARVONICA. Caernarvonshire.  
 ATHANATON, *Athanatos*. The isle of Thanet in Kent.  
 ATHEISIS. The river Tees in the county of Durham.  
 ATREBATIL. Inhabitants of Berkshire.  
 AUGUSTA TRINO BANTUM. London.  
 AUREA VALLIS. Golden Vale in Herefordshire. *L. Lat. Dict.*  
 AVALONIA. Glastonbury in Somersetshire.  
 AVONA. The river Avon, in various parts of England.  
 AVONA. Bungay in Norfolk. Hampton-court.  
 AVONÆ VALLIS. Avondale in Northamptonshire.  
 AXELODUNUM. Hexham in the county of Northumberland.
- B.**
- BACHELAGANÆ SYLVÆ. Bagley.  
 BADIZA. Bath in Somersetshire.  
 BADONICUS MONS. Bannes-down near Bath.  
 BAINUS PONS. Bainbridge in Yorkshire.  
 BALNEA, *Batha*, *Buthonia*. Bath city.  
 BANNAVENNA, *Bannaventa*, *Bennaventa*. Northampton.  
 BANUS. The river Ban in Lincolnshire.  
 BASENGA, *Basingum*. Basing in Hampshire.  
 BATERSEGA. Battersea in Surrey.  
 BEARROCSCIRA. Berkshire.  
 BEBBA. Bamburgh in Northamptonshire. *L. Lat. Dict.*  
 BEDEFORDIA, *Bedfordia*. Bedford.  
 BELGÆ. Inhabitants of Somerset, Wilts and Hantsire.  
 BELINUS SINUS. Belingsgate, Billingsgate.  
 BELLELANDA. Biland in Yorkshire.  
 BELLO DESERTUM, *Belloclivum*, *Bellus locus*. Beldesert or Beaudesert in Warwickshire.  
 BERCEIA, *Bercheria*. Berkshire.  
 BERECHINGUM. Barking in Essex.  
 BERCLEA, *Bercheleia*. Berkley in Gloucestershire.  
 BERMUNDI INSULA. Bermondsey in Surrey.  
 BERWICUS. Berwick upon Tweed.  
 BEVERLEA. Beverley in Yorkshire.  
 BEVERLACENSIS. Of Beverley.  
 BIBROCASSI, *Bibroci*. The hundred of Bray in Berkshire.  
 BIMONIUM, *Binonium*, *Binovia*, *Binovium*, *Vinovia*. Binchester in the bishopric of Durham.  
 BLACAMORA. Part of the North Riding of Yorkshire.  
 BLANCOFORDA. Blandford in Dorsetshire.  
 BLATUM BULGIUM. Bowness or Bunness in Cumberland.  
 BLESTIUM. Old-Town in Herefordshire.  
 BOCCINUM. Buckingham.  
 BODOTRIA. Edinburgh Firth.  
 BOLERIUM. Land's End.

BORCOVICUM, *Borcovicus, Borovicum*. Berwick upon Tweed.  
 BOTELEGA. Boteley near Oxford.  
 BOVIUM. Boverton in Brecknockshire.  
 BRABONIA. Brougham in Westmoreland.  
 BRACCHIIUM. Burgh in Yorkshire.  
 BRACHILEGA. Brackley in Northamptonshire.  
 BRANNODUNUM. Branchester in Norfolk.  
 BRANOVIUM, *Brannovium, Branoricum, Bravinum, Branconium*. The city of Worcester.  
 BRECHINIA. Brecknock city.  
 BREMENIUM. Rochester in Northumberland.  
 BREMENTONACUM. Overborough in Lancashire.  
 BREMENTURACUM. Brampton in Cumberland.  
 BRENTÆ VADUS. Brentford in Middlesex.  
 BRIGANTES. Inhabitants of Yorkshire, Lancashire, Durham, Westmoreland and Cumberland.  
 BRIGANTIUM. York city.  
 BRIGE, *Brage*. Broughton in Hampshire.  
 BRISTOLIA, *Bristowa*. The city of Bristol.  
 BROCAVUM, *Brocave, Broconiacum, Brovonacis, Brovonacum*. Brougham in Westmoreland.  
 BUCOSTENUM. Buxton in Derbyshire.  
 BUDEFORDA. Bedford.  
 BULLÆUM SILURUM. Buelth in Brecknockshire.  
 BURRIUM. Usk in Monmouthshire.

## C.

CACARIA, *Calcaria, Calatum*. Tadcaster in Yorkshire.  
 CAER PERIS. Portchester.  
 CAER SEVERUS. Sarisbury, Sandon.  
 CÆSAREA. The isle of Jersey.

CÆSARO-MAGUS. Burgsted and Brentwood in Essex.  
 CALACUM, *Calagum*. Overborough in Lancashire, Wheal Castle in Cumberland.  
 CALATERIUM NEMUS. The forest of Galtres in Yorkshire.  
 CALEDONIA. Scotland.  
 CALEDONIUS OCEANUS. The Scottish sea.  
 CALEVA, *Calena*. Wallingford in Berkshire.  
 CALNA. Calne in Wiltshire.  
 CALONIA. Coldingham in Scotland.  
 CAMBORICUM, *Camboritum*. Cambridge.  
 CAMBRIA. Wales.  
 CAMOLODUNUM, *Camoludunum, Camulodunum, Camudolanum*. Malden in Essex.  
 CANDALIA. Kendal in Westmoreland.  
 CANTABRIGIA. Cambridgeshire.  
 CANTIUM, *Kantium, Kancium, Kancia*. Kent.  
 CANTUARIA. Canterbury.  
 CANTUARIENSIS. Of Canterbury.  
 CARLEOLUM. Carlisle in Cumberland.  
 CARENII. Inhabitants of Cathness in Scotland, according to Camden.  
 CASSI, *Cassii*. The hundred of Cayshow in Hertfordshire.  
 CASSITERIDES. The isles of Scilly.  
 CASSIVELAUNI OPPIDUM. The old city of Verulam.  
 CASTRA ALATA, *Castrum Alatum, Castrum Puellarum*. Edinburgh in Scotland.  
 CASTRA EXPLORATORUM. Burgh on the Sands in Cumberland.  
 CASTRUM DE VIES, CASTRODUNUM. Devizes in Wiltshire.  
 CASTRUM LODANUM. Leeds in Kent. *L. Lat. Dict.*  
 CATARACTA. The river Swale in Richmondshire.  
 CATUELLANI, *Cattidudani, Cathricludani, Cattieuchlani*. The inhabitants

- of Buckingham, Bedford and Hertford-shires.
- CAVÆ DIRÆ. Holderness in Yorkshire.
- CAVODA. Cawood in Yorkshire.
- CERDICI VADUM. Chardford in Hants-hire.
- CERETICA. Cardiganshire.
- CEROTI INSULA, *Certesias*. Chertsey in Surrey.
- CERVI INSULA. Hartle-Pool in Durham.
- CESTRIA, *Chestria*, *Chestrum*. Chester city.
- CHINEGLISSI CASTRUM. Kenilworth castle.
- CHEVA. Kew in Surrey.
- CICEASTRIA, *Cicestria*. Chichester in Sussex.
- CIRENCESTRIA. Cirester or Cirencester in Gloucestershire.
- CLAMOVENTA, *Clanoventa*. Wentsbeck. *L. Lat. Dict.*
- CLARA-FONTANUS, *Clarus fons*. Sherburne in Dorsetshire.
- CLAUDIA, *Claudiocestria*, *Clevum*, *Glevum*. Gloucester city.
- CLAUSENTUM. Southampton.
- COCCIIUM. Ribchester in Lancashire.
- COLONIA, *Coludi*, *Coldania*. Coldingham in Scotland.
- COLCESTRIA, *Coleceastria*. Colchester in Essex.
- COLNIUS. Colne River in Middlesex. *L. Lat. Dict.*
- COLONIA VICTRICENSIS. Malden in Essex.
- COLUNUM. Colnbrook in Middlesex.
- COMBRETONIUM, *Combretovium*. Brettenham in Suffolk.
- CONACTA. Connaught province in Ireland. *L. Lat. Dict.*
- CONCANGIUM. The barony of Kenda-le.
- CONDATE. Congleton in Cheshire.
- CONDERCUM. Chester-le-street in the county of Durham.
- CONONIUM. Chelmsford in Essex.
- CONOVIUS. The river Conway that divides Caernarvonshire from Denbighshire.
- CONVENNON, *Convennos Insula*. Conway island at the mouth of the Thames.
- CONVENTRIA, *Coventria*. Coventry city in Warwickshire. *Reg. Orig.* 132 b.
- CORIA, *Curia*. Corebridge in Northumberland.
- CORINIA. Cornwall.
- CORINIUM. Cirencester in Gloucestershire, according to Camden.
- CORITANI, *Coritavi*. Inhabitants of Lincolnshire, Leicestershire, Rutland, Derby and Nottinghamshire.
- CORNAVII, *Cornabii*. Inhabitants of Shropshire, Cheshire, and the adjacent districts.
- CORNUBIA. Cornwall. *Bract.* fol. 407.
- CORNUTUM MONASTERIUM. Hornchurch in Essex.
- CORSTOPILUM, *Corstopitum*, *Curia*. Corebridge upon Tyne, according to Talbot. Morpeth in Northumberland, according to Camden.
- COTTESWOLDIA. Cotswold in Gloucestershire.
- COVI BERCHILEGA. Coberley in Gloucestershire.
- CRECOLADA, *Græcolada*. Creeklade or Cricklade in Wiltshire.
- CRIDEA. Crediton or Curton in Devonshire.
- CROCOCALANA, *Crocolana*. Ancaster in Lincolnshire.
- CROYLANDIA, *Crowlandia*, *Crulandia*. Crowland in Lincolnshire.
- CUMBRIA, *Cumberlandia*. Cumberland. *Reg. Orig.* 206 b, 207.
- CUNETIO. Marlborough in Wiltshire. Kenet River in Wiltshire.

## D.

- DAMNONII, *Dumnonii*. Inhabitants of Devonshire and Cornwall.
- DANICA SYLVA. Andredswald Forest in Sussex. The forest of Dean in Gloucestershire.

DAMNONIORUM PROMONTORIUM. The Lizard in Cornwall.  
 DANUBIÆ. The forest of Dean in Gloucestershire.  
 DANUM. Doncaster in Yorkshire.  
 DANUS. The river Dane in Lincolnshire. The Dan or Daven in Cheshire. The Don in Yorkshire.  
 DARBIA, *Derbia*. Derby.  
 DARBIENSIS COMITATUS. Derbyshire.  
 DARVENTIA, *Derventio*. The river Derwent in Derbyshire.  
 DARVERNUM. Rochester in Kent.  
 DE ALTO PECCO. High Peak; the Castle of the Peak in Derbyshire.  
 DEA, *Diva*. The river Dee in Scotland. *L. Lat. Dict.*  
 DEI LOCUM. Godstow in Oxfordshire.  
 DEIDONUM, *Taodunum*. Dundee. *L. Lat. Dict.*  
 DEIRA SYLVA, *Deirosylva*. Deirhurst in Gloucestershire.  
 DELA. Deal in Kent.  
 DELGOVITIA. Godmanham in Yorkshire.  
 DEMETÆ, *Dimeciæ*. Inhabitants of West Wales.  
 DEMETIA. West Wales.  
 DENBIGHIA. Denbigh in Denbighshire.  
 DERBIA. Derbyshire. *Reg. Orig.* 101 b.  
 DERENTIVADUM. Dertford in Kent.  
 DERWENTIO, *Derventio*. Auldby upon Derwent in Yorkshire. The river Derwent.  
 DEVA. The river Dee in Cheshire.  
 DEVANA URBS, *Deva*. Chester or Westchester.  
 DEVONIA. Devonshire. *Reg. Orig.* 63.  
 DIVILINA. Dublin. *L. Lat. Dict.*  
 DIVISÆ, *Divisio*. Devizes in Wiltshire.  
 DORCESTRIA, *Dorkcestria*, *Dorkecestria*, *Dornsetta*. Dorchester City in Dorsetshire. *Reg. Orig.* 179 b.  
 DORCINIA CIVITAS, *Durocastrum*. Dorchester in Oxfordshire.

DORFRIS, *Doris*, *Dubris*. Dover in Kent.  
 DORBERNIA, *Dorovernum*, *Durovernum*. Canterbury in Kent.  
 DORSETANIA, *Dorsettia*, *Duria Provincia*. Dorsetshire. *L. Lat. Dict.*  
 DORUS. The river Dor in Hertfordshire.  
 DOVERIA, *Dovoria*, *Dovorria*. Dover in Kent. *L. Lat. Dict. Reg. Orig.* 193 b.  
 DUBLINIA, *Dublinium*. Dublin.  
 DUNELMENSIS COMITATUS. The county of Durham.  
 DUNELMIA, *Dunelmum*, *Dunelmus*, *Dunholmus*, *Dunolnum*. Durham city.  
 DUNUM, *Dunus Sinus*. Dunsbey near Whitby in Yorkshire.  
 DUNVICUS, *Felici's Oppidum*. Flixton in Suffolk.  
 DURIA PROVINCIA. Dorsetshire.  
 DURNOVARIA, *Durvonovaria*. Dorchester in Dorsetshire.  
 DUROBREVIS, *Durobrevum*, *Dorobrevum*, *Durobrovæ*, *Duroprovis*. Rochester city in Kent. *L. Lat. Dict.*  
 DUROCOBRIVÆ. Redburn in Hertfordshire.  
 DUROLENUM, *Durolevum*. Lenham in Kent.  
 DUROLIPONS. Gormanchester in Huntingdonshire.  
 DUROLITUM. Layton in Essex.  
 DUROTRIGES. Inhabitants of Dorsetshire, and the adjacent districts.  
 DUROVERNUM. Canterbury in Kent. *L. Lat. Dict.*

**E.**

EAST-SEXENA, *Essexia*. Essex.  
 EBLANA. Dublin. *L. Lat. Dict.*  
 EBODIA. The isle of Alderney.  
 EBORACUM, *Eburacum*. York city.  
 EBORUM. York. *Bract. fol.* 407. *Reg. Orig.* 61 b.  
 EBUDA. The island of Skye. *L. Lat. Dict.*  
 EDMUNDI BURGUS. Bury St. Edmunds in Suffolk.

- EILECURIUM VALLIS. Aylesbury vale in Buckinghamshire.
- EILIMENON GABRANTONICORUM. Sowerby in Yorkshire.
- ELIENSIS INSULA. The isle of Ely.
- ELLANDUNUM. The old name of Wilton in Wiltshire.
- ELTESHAMUM. Eltham in Kent.
- EMINENTIOR. Easton-ness in Suffolk.
- EOVESUM, *Evestamum*. Evesham or Evesholm in Worcestershire.
- EPEIACUM, *Epiacum*. Pap-Castle in Cumberland.
- EPIDIUM. Cantire in Scotland.
- ETOCETUM. Uttoxeter in Staffordshire, according to Camden.
- EUBONIA. The Isle of Man.
- EVONIUM. Dunstaffage in Scotland. *L. Lat. Dict.*
- EXA. The river Exe in Devonshire.
- EXONIA. Exeter city in Devonshire.
- EXPLORATORUM CASTRA. Burgh-upon-Sands in Cumberland.

**F.**

- FALA. The river Vale in Cornwall.
- FALENSIS PORTUS. Falmouth in Cornwall.
- FANUM SANCTI ALBANI. St. Albans in Hertfordshire.
- FANUM SANCTI ILTUTI. St. Lantwit in Glamorganshire.
- FANUM IVONIS PERSA, *Persia*. St. Ives in Huntingdonshire.
- FANUM LEONIS. Leominster in Herefordshire.
- FANUM NEOTI. St. Neots in Huntingdonshire.
- FANUM REGULI. St. Andrews in Scotland.
- FANUM SANCTI STEPHANI. Kirkby Stephen in Westmoreland.
- FAUSTINI VILLA. Bury St. Edmonds in Suffolk.
- FAWENSES. Inhabitants of Foy or Fowey in Cornwall.

- FIBRILEGA, *Fibrolega*. Beverley in Yorkshire.
- FLINTIA. Flint-town.
- FONS AMNENSIS. Amwell in Hertfordshire. *L. Lat. Dict.*
- FONS BRIDGIDÆ. Bride-well in London.
- FONS CLARUS. Sherborne in Dorsetshire.
- FONTANENSIS ECCLESIA. Wells in Somersetshire.
- FRETUM BRITANNICUM, *Fretum Gallicum, Fretum Morinorum*. The Straits of Dover or Calais.

**G.**

- GABRANTONICORUM, *Gabrantovicorum, Salutaris Portus, Portuosus Sinus*. Sowerby in Yorkshire.
- GABROCENTUM, *Gabrosentum*. Gateshead in Durham.
- GADENI. Inhabitants of Roxburgh, Selkirk, Peebles, and Lanarkshires in Scotland.
- GADIVA. Aberfraw in Anglesey.
- GALAVA, *Gallava*. Walwick in Northumberland.
- GALLATUM, *Gallagum*. Whealp or Whealop Castle in Cumberland.
- GALLENA, *Galleva*. Wallingford in Berkshire.
- GALWEIA, *Gaelwallia, Gallovidia*. Gallo way in Scotland. *L. Lat. Dict.*
- GANGANORUM PROMONTORIUM. Lheyne in Caernarvonshire.
- GARBANTORIGUM. Caerlaverock in Scotland. *L. Lat. Dict.*
- GARIONUM, *Garonum*. Yarmouth in Norfolk.
- GARRIENIS, *Gargenus*. The river Yare in Norfolk.
- GAUSENNÆ, *Gausennis*. Brig-Casterton in Lincolnshire.
- GELDEFORDA. Guildford in Surrey.
- GENUMIA. North Wales.
- GESORACUM. The strait between England and the Isle of Wight.

GIPPEVICUS, *Gipwicus*, *Gippus*. Ipswich in Suffolk. 2 *Ld. Raym.* 1239. 2 *Salk.* 434. Anciently called Gyp-penswich.

GLAMORGANIA, *Glamorgantia*. Glamorganshire.

GLASCONIA, *Glastonia*, *Glestonia*. Glastonbury in Somersetshire.

GLASCUA. Glasgow. *L. Lat. Dict.*

GLAVORNA, *Glevum*. Gloucester.

GLOCESTRIA, *Gloucestria*, *Gloveceastria*, *Glovernia*. Gloucester. *Reg. Orig.* 268 b.

GLOTTA, *Glota*. The river Clyde in Scotland. The isle of Arran.

GOBANUM. Abergavenny in Monmouthshire.

GODERICI CASTRUM. Goodrich Castle in Herefordshire.

GRANTA. Cambridge, according to some.

GRAVESENDA, *Greva*. Gravesend in Kent. Called Grevesham in Domesday Book.

GRENOVICUS, *Grenovicum*, *Greenwicum*. Greenwich in Kent.

GUALÆ. Wales.

GUERFA. The river Wharf in Yorkshire.

GULDONICUS CLIVUS. Guy-Cliff near Warwick.

GUINETHIA. Wales.

GULDFORDA. Guildford in Surrey.

GUMICASTRUM, *Gumicaster*. Godmanchester in Huntingdonshire.

GWALLIA. Wales. *L. Lat. Dict.*

## H.

HABITANCUM. Risingham in Northumberland.

HADRIANI MURUS. The Picts' Wall.

HAGULSTADUNUM. Hexham in Northumberland.

HAMPTUNA. Southampton in Hants.

HANTONIA. Hants, or Hampshire.

HAREFORDIA. Hereford city.

HASTINGÆ. Hastings in Sussex.

IEBUDA. The island of Skye. *L. Lat. Dict.*

HELENUM PROMONTORIUM. The Land's End.

HELIENSE CŒNOBIUM. Ely city in Cambridgeshire.

HENLEGA. Henley-upon-Thames in Oxfordshire.

HEREFORDIA. Hereford city.

HERTFORDIA. Hertford.

HERTFORDIÆ COMITATUS. Hertfordshire.

HEYA. Hithe in Kent. *Bract.* fol. 118.

HIBERNIA. Ireland. *Bract.* fol. 395 b.

HINCHESEGA. Hinkesey near Oxford.

HITHINUS PORTUS. Hithe in Kent.

HOLLANDIA, *Hoylandia*. Holland; a part of Lincolnshire.

HOMELEA. The river Humble in Hants.

HROFI CIVITAS. Rochester in Kent.

HUMBRA. The river Humber in Yorkshire.

HUNDESDENA, *Hunsdona*. Hunsdon in Herefordshire.

HUNGREFORDA. Hungerford in Berkshire.

HUNTINGDONIA. Huntingdon or Huntingdonshire. *Reg. Orig.* 105.

HUNTINGDONENSIS AGER. Huntingdonshire.

HURSTELEGA. Hurstley in Hants.

HYDROPOLIS. Dorchester in Oxfordshire.

## I.

ICCIUS (ITIUS) PORTUS. Calais in France.

ICENI. Inhabitants of Suffolk, Norfolk, Cambridge, and Huntingdonshires.

ICIANI, *Isianos*. Ixworth in Suffolk.

ICTA. The Isle of Wight.

IDUMANUM AESTUARIUM. The river Blackwater in Essex.

INGIRVUM. Yarrow in the county of Durham.

INSULA OVIUM. Sheppey Island in Kent. *L. Lat. Dict.*

INSULA VECTA, *Vectis, Vectesis*. The Isle of Wight. *Reg. Orig.* 62.

INTERAMNA. Twinhamburn in Dorsetshire.

ISACA, *Isca*. The river Exe in Devonshire.

ISANNAVANTIA, *Isannavaria, Isannavatia*. Northampton town. *L. Lat. Dict.*

ISCA. The river Esk in Scotland.

ISCA DAMNONIORUM. Exeter city.

ISCHALIS. Inelchester or Ilchester in Somersetshire.

ISIDIS INSULA. Ouseney near Oxford.

ISIDIS VADUM. Ouseford or Oxford.

ISIS. The river Isis. The river Ouse.

ISURIA. Yorkshire.

ISURIUM. Aldborough in Yorkshire.

ITUNA. The river Eden in Westmoreland and Cumberland.

ITUNNA. The river Eden or Solway Frith, Scotland.

### K.

KANCIA. Kent. *Fleta*, lib. 5, c. 31, § 10.

KANUS. The river Ken in Westmoreland.

KARLIOL. Carlisle. *Mem. in Scacc. M.* 9 Edw. I.

KENETA. The river Kennet in Wiltshire.

KERESBURGA. Carisbrook Castle in the Isle of Wight.

KESTEVENA. Kesteven; a part of Lincolnshire.

KINEBANTUM CASTRUM. Kimbolton Castle in Huntingdonshire.

### L.

LACTODORUM, *Lactodurum, Lactorodum, Lactorudum*. Lutterworth or Loughborough in Leicestershire. Stony Stratford in Buckinghamshire.

LAGECIUM, *Legiolium*. Castleford in Yorkshire.

LAGENIA. Leinster province in Ireland. *L. Lat. Dict.*

LAMITHA. Lambeth in Surrey.

LANCASTRIA. Lancaster; Lancashire.

LANDAVA. Llandaff in Wales.

LANGANUM PROMONTORIUM. Lheyne promontory in Caernarvonshire.

LAUDENIA, *Laudonia*. Lothian in Scotland. *L. Lat. Dict.*

LAVATRES, *Lavatrix*. Bowes upon Stanmore in Richmondshire. *L. Lat. Dict.*

LEGACESTRIA, *Legecestria*. Leicester.

LEICESTRIA, *Leiceastria, Licestria*. Leicester. *Leycestria*, Leicestershire. *Reg. Orig.* 196 b, 197.

LIMANIS PORTUS. Lime in Kent. *L. Lat. Dict.*

LEOGORIA, *Legoria*. Leicester.

LEONENSE (LEOFENSE, LEOVENSE) CÆNOBIUM, *Leonis Monasterium*. Leominster in Herefordshire.

LETHA. Leith in Scotland.

LEUCARUM. Loghor in South Wales.

LICHFELDIA. Litchfield.

LIDDENUS. The river Ledden in Herefordshire.

LIDEFORDA. Lidford in Devonshire.

LIMENUS. The river Rother in Yorkshire.

LIMERICENSIS COMITATUS. Limerick county in Ireland. *L. Lat. Dict.*

LIMODOMUS. Limehouse near London.

LIMPIDA SYLVA. Sherwood Forest in Nottinghamshire.

LINCOLNIA, *Lindcolnia, Lindecollinum, Lindecollina civitas*. Lincoln city. *Lincolnia*; Lincolnshire. *Bract.* fol. 309. *Reg. Orig.* 34, 65.

LINDESFARNA, *Lindisfarnum*. Holy Island, or Farn-Isle, on the coast of Northumberland.

LINDOCOLLINUM, *Lindocolina, Lindon, Lindum*. Lincoln city.

LINNUM (LINUM) *Regis*. Lynn in Norfolk, King's Lynn.

LOGII. Inhabitants of the east coast of Sutherland and Caithness-shires in Scotland.

LOMEA. Goodwin Sands. *L. Lat. Dict.*

LOMITHIS. Lambeth in Surrey.

LONDONENSE OPPIDUM, *Londinia, Londinium, Londinum, Londonia, Lundinum, Lundonia, Lundonium.* London. *Reg. Orig.* 24 b.

LONCASTRIA. Lancaster.

LUGUS. The river Lug in Herefordshire.

LUCOPIBIA, *Luguballia, Luguballum, Luguwallum.* Carlisle city in Cumberland.

LYCHEFELDIA. Lichfield city in Staffordshire.

### M.

MADUS VAGNIACÆ, *Vagniacum.* Maidstone in Kent.

MAGÆ, *Magi, Magnæ, Magnis.* Old Radnor.

MAGLOVA, *Maglona.* Maclenith in Montgomeryshire.

MAGNA. Chester in the Wall, near Haltwhistle in Northumberland.

MAGNITUM, *Magionimum, Magovinium, Magiovinium.* Dunstable in Bedfordshire.

MAGNUS PORTUS. Portsmouth in Hampshire.

MAIDULPHI CURIA, *Maidulphi Urbs, Maldunense monasterium, Malmesburium.* Malmesbury in Wiltshire.

MALA PLATEA. Ilstreet in Cheshire.

MALVERNIA, *Malvernium.* Malvern in Worcestershire.

MALUS PASSUS. Malpas in Cheshire.

MAMMUCIUM, *Mancunium.* Manchester in Lancashire.

MANDUESSEDUM. Manchester in Warwickshire.

MANNIA. The Isle of Man.

MANNENSES. Inhabitants of the Isle of Man.

MANUCIUM. Manchester in Lancaster.

MARCHIDUNUM. Roxburgh in Scotland. *L. Lat. Dict.*

MARE SABRINIANUM. The Severn Sea.

MARIDUNUM. Caermarthen town.

MARLEBRIGIA. Marlborough in Wiltshire.

MASSAMENSIS PONS. Masham Bridge in Yorkshire.

MAUDITI CASTRUM. St. Mawe's Castle in Cornwall.

MEALDUNUM. Maldon in Essex.

MEDEGUAIA. The river Medway in Kent.

MEDENA. New Port in the Isle of Wight.

MEDEWEIA, *Medewaia, Medweia.* The river Medway in Kent. *Mag. Cart.* 1 *Hen.* III. c. 26. *Id.* A. D. 1217, c. 29. *Id.* 9 *Hen.* III. c. 23.

MEDIA, *Midia.* Meath county in Ireland.

MEDIOLANIUM. Middleham in Yorkshire.

MEDVAGA. The river Medway in Kent.

MELDUNUM. Malmesbury in Wiltshire.

MENAVIA, *Menavia Secunda.* The Isle of Man.

MENEVIA. St. David's in Wales.

MERIONITHIA, *Mervinia.* Merionethshire.

MERLEBRIGIA. Marlborough.

MERSIA. The river Mersey in Cheshire.

METARIS ÆSTUARIUM. The Washes in Norfolk.

MEVANIA. The Isle of Man.

MIDDLESEXIA. Middlesex. *Reg. Orig.* 261.

MOLIS. The river Mole in Surrey.

MOMONIA. Munster in Ireland.

MONA. The Isle of Anglesey.

MONA ULTERIOR. The Isle of Man. *L. Lat. Dict.*

MONABIA, *Monoeda.* The Isle of Man.

MONASTERIUM DE BELLO. Battle Abbey in Sussex.

MONASTERIUM DE MELSA. Meaux Abbey in Yorkshire.

MONMUTHIA, *Monumetha, Monumuthia.* Monmouth in Wales.

MONOCHAPOLIS, *Monarchapolis*. New-castle-on-Tyne.  
 MONS ACUTUS. Montacute in Somersetshire.  
 MONS DIVES. Richmond in Surrey.  
 MONS GOMERICUS, *Montgomeria*. Montgomery in Wales.  
 MONS ROSARUM. Montrose in Scotland.  
 MORAVIA. Moray in Scotland.  
 MORBIUM. Morsby in Cumberland.  
 MORIDUNUM, *Ridunum*. Seaton in Devonshire.  
 MORTUUS LACUS. Mortlake in Surrey.  
 MURIMINTUM, *Murivindum*. Silcester in Hampshire.

**N.**

NAUTICUS SINUS. Reatherhithe or Rotherhithe. Called Redriff.  
 NAVESBIA. Naseby in Northamptonshire.  
 NEOMAGUS, *Noviomagus*. Croydon in Surrey. *L. Lat. Dict.*  
 NEOPORTUS. Newport.  
 NEOPORTUS PAGANELLICUS. Newport Pagnel in Buckinghamshire.  
 NIDUM, *Nidus*. Neath in Glamorganshire.  
 NIGERIA. Blackney in Norfolk.  
 NIVICOLLINI. Snowdon Hills in Caernarvonshire.  
 NORDHUMBRIA. Northumberland.  
 NORDOVICUM. Norwich city.  
 NORDOVOLCA, *Norfolcia*. Norfolk.  
 NORTHANIMBRIA. Northumberland.  
 NORTHANTONIA. Northampton.  
 NORTHIMBRIA, *Northumbria*. Northumberland.  
 NORTHWICUM. Norwich. *Bract. fol.* 387.  
 NORWICUM. Norwich. *Reg. Orig.* 118.  
 NOTTINGHAMIA. Nottingham, Nottinghamshire.  
 NOVANTII. Inhabitants of Galloway in Scotland.  
 NOVANTUM PROMONTORIUM. The Mull of Galloway. *L. Lat. Dict.*

NOVIODUNUM. Newenden in Kent.  
 NOVIUS. Conway.  
 NOVUM CASTELLUM. Newcastle in Northumberland.  
 NOVUM CASTRUM SUPER TINAM. Newcastle-upon-Tyne. *Mem. in Scacc.* H. 18 Edw. I.  
 NOVUM FORUM, *Novum Mercatum*. Newmarket in Suffolk.  
 NOVUS BURGUS. New Port in the Isle of Wight.  
 NOVUS PORTUS. New Port.  
 NUBIRIA. Newbury in Berkshire.

**O.**

OCELLUM PROMONTORIUM. Kelenesy in Yorkshire.  
 OCCIDUA WALLIA. Cornwall.  
 OCEANUS VERGIVIVS. The Vergivian or Western Ocean.  
 OCRINUM PROMONTORIUM. The Lizard point in Cornwall.  
 OCTOPITARUM PROMONTORIUM. St. David's Head in Pembrokeshire, Wales.  
 OLICANA. Halifax in Yorkshire.  
 ORDOVICES, *Ordevices*. Inhabitants of North Wales, bordering on England.  
 ORESTII. Inhabitants of Argyle and Perth in Scotland.  
 ORUS. The river Ore in Suffolk.  
 OSCA. The river Usk in Wales.  
 OTTADENI, *Ottadini*. Inhabitants of the east coast of Northumberland and the adjacent coast of Scotland.  
 OUSA. The river Ouse in Yorkshire.  
 OVINIA INSULA. The isle of Sheppey in Kent.  
 OXENFORDIA, *Oxonia*. Oxford city.

**P.**

PARATHALASSIA. Walsingham in Norfolk.  
 PEGELANDIA. Peckirk near Crowland.  
 PENBROCHIA. Pembroke in Wales.  
 PENDINAS. Pendennys castle in Cornwall.

PENQUERNUM. Shrewsbury town.  
 PENNORINUM. Penryn in Cornwall.  
 PERSORA, *Persora*. Pershore in Worcestershire.  
 PETRIBURGUS, *Petropolis*. Peterborough city in Northamptonshire.  
 PETUARIA, *Petuaria Parisiorum*. Beverley in Yorkshire.  
 PEVENSEA. Pevensey in Sussex.  
 PLINLIMONIA. Plinlimmon in Wales.  
 PONS BURGENSIS. Borough-Brigge in Yorkshire.  
 PONS ÆLII. Ponteland in Northumberland.  
 PONTES. Reading in Berkshire. Colnbrook in Buckinghamshire.  
 PORTESMUTHA. Portsmouth in Hampshire.  
 PORTLANDIA, *Portuna Insula*. Portland isle.  
 PORTUS MAGNUS, *Portus Ostium*. Portsmouth.  
 PORTUS SALUTIS. Cromarty in Scotland.  
 PRÆSIDIUM. Warwick town.  
 PRÆTORIUM. Patrington in Yorkshire.  
 PROCOLITIA, *Protolitia*. Prudhow or Prodhow castle in Northumberland.  
 PROFUNDUM VADUM. Deptford.  
 PUTENEGA. Putney in Surrey.

**R.**

RAGANEIA. Raleigh in Essex.  
 RATÆ. Leicester.  
 RATOSTATIBIUS, *Rhatostatibius*. The river Taff in Glamorganshire. *L. Lat. Dict.*  
 REGIODUNUM HULLINUM. Kingston-upon-Hull in Yorkshire.  
 REGIODUNUM THAMESINUM. Kingston-upon-Thames in Surrey.  
 REGIS BURGUS. Queenborough in Kent.  
 REGNI. Inhabitants of Surrey, Sussex and the seacoasts of Hampshire.

REGNI SYLVA. Ringwood in Hampshire.  
 REGULBIUM. Reculver in Kent.  
 REPANDUNUM. Repton in Derbyshire.  
 RHEDUS. The river Read in Northumberland.  
 RHEMNIUS. The river Remney in Glamorganshire.  
 RHIBELLUS. The river Ribble in Lancashire.  
 RHOBODGIUM PROMONTORIUM. Fair Foreland in Ireland.  
 RHUTUBI PORTUS, *Ritubi Portus*, *Rhutupie statio*, *Rhitupis portus*, *Rutupis portus*. Reptacester, Ruptimuth, Richberg, now Richborough near Sandwich in Kent.  
 RIBODUNUM, *Rigodunum*. Ribchester in Lancashire.  
 RICHMONDIA, *Richmundia*. Richmond in Yorkshire and in Surrey.  
 RIPADIUM. Ripton in Derbyshire.  
 RIPODUM. Rippon in Yorkshire.  
 ROBERTINUS PONS. Rotherbridge in Sussex.  
 ROFFA, *Roibis*. Rochester city in Kent.  
 ROISLÆ OPPIDUM. Royston in Cambridgeshire.  
 ROTHESIA. Rothsay in Scotland. *L. Lat. Dict.*  
 RUBER CLIVUS. Redcliff or Ratcliff near London.  
 RUGNITUNIA, *Ruitonia*, *Rutunia*. Riton upon Dunsmore in Warwickshire.  
 RUPIS AUREA. Goldcliff in Monmouthshire.  
 RUTHUNIA. Ruthin in Denbighshire.  
 RUTLANDIA. Rutlandshire.  
 RUTUNIUM. Rowton in Shropshire.  
 RUTUPLÆ. Richborough near Sandwich in Kent.  
 RUTUPIRUM LITTUS. The Foreland in Kent.

**S.**

SABAUDIA. The Savoy in London.  
 SABRIANA, *Sabrina*. The river Severn

SABULOVICUM. Sandwich in Kent.

SACANA, *Sena, Senus, Siambis, Sineus, Socinos*. The river Shannon in Ireland. *L. Lat. Dict.*

SACRA INSULA. Holy Island.

SACRA SYLVA, *Sacro bosco*. Halifax in Yorkshire.

SALENÆ, *Salinæ*. Saludy in Bedfordshire.

SALESBURIA, *Salisburia, Saresberria, Sarisburia*. Salisbury city in Wiltshire.

SALOPESBIRIA, *Salopia*. Shrewsbury.

SALOPLÆ COMITATUS. Shropshire.

SALTRIA. Sawtrey in Huntingdonshire.

SALTUS ANDRED. Weald of Kent. *L. Lat. Dict.*

SANDICUM, *Sandovicus, Sanwicum*. Sandwich in Kent. Sandwyz. *Bract.* fol. 118.

SARNA. Garnesey or Guernsey island.

SAVERNA. The river Severn.

SCEPTONIA. Shaftesbury in Dorsetshire.

SCHELSEGA. Chelsea near London.

SCHIRBURNIA. Sherburn in Dorsetshire.

SCONA. Scone in Scotland.

SCORBERIA, *Scorbesberia*. Shrewsbury town.

SECANDUNUM. Seckington in Warwickshire.

SEGEDUNUM. Seghill or Sighill in Northumberland.

SEGELOCUM, *Segelogum*. Ollerton in Nottinghamshire. Agle in Lincolnshire.

SEGONTIUM. Caer-sejont near Caernarvon town.

SEGUNTIUM. Silchester in Hampshire.

SEOLESLÆ. Seolsey or Selsey in Sussex.

SETANTIORUM PALUS. Winandermere in Lancashire.

SETEIA ÆSTUARIUM. Dee mouth.

SEVERIA. Salisbury city.

SHENUM. Shene or Richmond in Surrey.

SILURES. Inhabitants of that part of

South Wales bordering on England, and of those parts of England between South Wales and the Severn.

SINNODUNUM. Sinodun Hill near Wallingford in Berkshire.

SIMOMAGUS, *Sinomagus, Sitomagus*. Thetford in Norfolk.

SLEPA. The old name of St. Ives in Huntingdonshire.

SNAWDONIA. Snowdon Forest in Caernarvonshire.

SOMARIDUNUM. Somerton in Lincolnshire.

SOMERSATA, *Somerseta, Somersetania, Somersetensis comitatus, Somertunensis comitatus*. Somersetshire. *L. Lat. Dict.*

SORBIODUNUM, *Sorviodunum, Sorurdunum*. Old Salisbury or Old Sarum.

SOUTHAMPTONIA. Southampton.

SOUTHERIA, *Southriona, Southria*. Surrey.

SOUTHSEXENA, *Southsexia*. Sussex.

SPEA. The river Spey in Scotland. *L. Lat. Dict.*

SPINARUM INSULA. Thorny Isle, the old name of Westminster.

SPINÆ, *Spiriæ*. Newbury in Berkshire, and Spine near Newbury.

STAFFORDIA. Stafford; Staffordshire.

STANFORDIA. Stanford in Lincolnshire.

STENUM. Stene in Northamptonshire.

STOURUS, *Sturus*. The river Stour in Kent, in Dorsetshire, in Suffolk, and in Derbyshire.

STRIGULIA. Chepstow in Monmouthshire.

STRIVILLINA. Stirling in Scotland.

STUODUNUM. Stourton and Stourminster in Dorsetshire.

SUALVA, *Swala*. The river Swale in Yorkshire.

SUDOVERCA, *Sudovolca*. Southwark in Surrey.

SUDRIA, *Sudurheia, Surria, Suthria, Suthriona*. Surrey. *L. Lat. Dict.*

SUFFOLCIA, *Suffolicia*. Suffolk.

**T.**

TAFFUS. The river Taff in Glamorgan-shire.  
 TAMA. The river Thame in Oxfordshire, and in Staffordshire.  
 TAMA. Tame in Oxfordshire.  
 TAMARA, *Tamarus*, *Tambra*. The river Tamer in Cornwall.  
 TAMAWORDINA, *Tamworthia*. Tamworth in Staffordshire.  
 TAMISIA, *Thamisia*. The river Thames. *Mag. Cart.* 9 Hen. III. c. 23.  
 TAMISIS, *Tamesis*, *Thamesis*. The river Thames.  
 TAVA. The river Tay in Scotland.  
 TAVISTOKIA. Tavistock in Devonshire.  
 TEDFORDIA, *Theodfordum*. Thetford in Norfolk.  
 TERENTUS. The river Trent.  
 TESA, *Teesa*, *Teisa*, *Tesis*, *Tesis*, *Teisis*. The river Tees in the county of Durham. *L. Lat. Dict.*  
 TETOCURIA. Tetbury in Gloucestershire.  
 THAMESIS. The river Thames.  
 THANATON, *Thanatos insula*. The isle of Thanet in Kent.  
 THEOCI CURIA, *Theokesberia*. Tewkesbury in Gloucestershire.  
 THEODORUNUM. Wells in Somersetshire.  
 THERMÆ. The city of Bath.  
 THONODUNUM. Taunton in Somersetshire.  
 THORNEGA, *Thornege*, *Thorneye*. The old name of Westminster.  
 THORNEIA. Thorney in Cambridge-shire.  
 TINA, *Tinna*. The river Tine in Northumberland.  
 TINDOLANA. Winchester in the wall.  
 TINEMUTHA. Tinemouth in Northumberland.  
 TINTAGIUM. Tintagel in Cornwall.  
 TOLIAPIS, *Toliatis*. The isle of Sheppey in Kent.

TORCESTRIA. Towcester in Northamptonshire.

TOTONESIUM. Totness in Devonshire.

TREHENTA. The river Trent.

TRENOVANTUM, *Trinovantum*, *Trinobantum*. London, called Troy Novant.

TRENTA. The river Trent.

TRINOBANTES, *Trinovantes*, *Trinobantes*. Inhabitants of Middlesex and Essex.

TRIPONTIUM. Towcester in Northamptonshire.

TRISANTON, *Trisantonis portus*. Southampton.

TUESIS. Berwick-upon-Tweed.

TUNNOCELLUM, *Tunocellum*. Tine-mouth in Northumberland.

**U.**

UBBANFORDA. Norham in Northumberland. *L. Lat. Dict.*

ULCARUS. The isle of Oleron in France. *L. Lat. Dict.*

ULIDIA, *Ultonia*. Ulster in Ireland. *L. Lat. Dict.*

ULMETUM. Elmsley in Yorkshire.

UMBER. The river Humber in Yorkshire.

URICONIUM. Wroxeter in Shropshire. *L. Lat. Dict.*

URIVALLIS. Jorval in Yorkshire.

UROVICUM. York city. *L. Lat. Dict.*

USOCONNA. Okenyate in Shropshire.

UXANTISSENA. The isle of Ushant. *L. Lat. Dict.*

UXINUS PONS. Uxbridge in Middlesex. *L. Lat. Dict.*

**V.**

VADUM RUBRUM, *Vadum Corvinum*. Hertford. *L. Lat. Dict.*

VADUM PULCHRUM. Fairford in Gloucestershire.

VAGA, *Waya*. The river Wye in Herefordshire.

VAGNIACÆ, *Vagniacum*. Wrotham in Kent. Maidstone in Kent.

- VALLIS ANANGIA. Annandale in Scotland.
- VALLIS AUREA. Golden Vale in Herefordshire.
- VALLIS CRUCIS. Vale of the Cross in Denbighshire.
- VALLUM. The Picts' Wall.
- VANDALIS. The river Wandle in Surrey.
- VANDELBIRIA. Wandlesbury near Cambridge.
- VANATINGA. Wantage or Wanting in Berkshire.
- VARIS. Bodvay in Flintshire.
- VECTA, *Vectis*, *Vectesis*. The Isle of Wight.
- VEDRA, *Verus*. The river Were in Durham. *L. Lat. Dict.*
- VENANTODUNIA. Huntingdonshire.
- VENANTODUNUM, *Venatorum Mons*. Huntingdon.
- VENEDOTIA. North Wales.
- VENTA BELGARUM. Winchester in Hampshire.
- VENTA ICENORUM. Caister near Norwich.
- VENTA SILURUM. Caer-went in Monmouthshire.
- VERLUCIO. Warminster in Wiltshire. *L. Lat. Dict.*
- VEROLAMIUM, *Verulamium*. Verulam near St. Albans in Hertfordshire.
- VEROVICUM, *Vervicus*. Warwick.
- VERTERÆ, *Verteris*. Burgh upon Stannmore in Westmoreland. *L. Lat. Dict.*
- VETELEGANUS PONS. Wheatley bridge near Oxford.
- VETELINGIANA VIA. Watling Street.
- VICUS MALBANUS. Nantwich in Cheshire.
- VIDOGARA. Ayr in Scotland. *L. Lat. Dict.*
- VIGORNIA. Worcester city.
- VILLA FAUSTINI. Bury St. Edmunds in Suffolk.
- VILLA NOVA. Newnham in Hertfordshire.
- VILUGIANA PROVINCIA. Wiltshire.
- VINCHELSEGA, *Vindagora*. Winchelsea in Sussex.
- VINDELIS. Old Winchelsea.
- VINDELISORA. Windsor in Berkshire.
- VINDOBALA, *Vindomara*. Wall's end in Northumberland.
- VINDOGLADIA, *Vindugladia*. Wimbörne in Dorsetshire.
- VINDOLANA. Old Winchester in Northumberland.
- VINDONUM, *Vindonus*. Silchester in Hampshire. A doubtful position.
- VIRECINUM, *Virecium*. Wroxcester in Shropshire.
- VIRIDIS SINUS. Greenwich.
- VIROCONIUM. Wroxeter in Shropshire. *L. Lat. Dict.*
- VITREA INSULA. Glastonbury in Somersetshire.
- VOLUBA. Falmouth in Cornwall.
- VOLUCRUM DOMUS. Fulham in Middlesex.
- VOREDA. Old Penrith in Cumberland.

## W.

- WALLIA. Wales. *Bract.* 395 b.
- WARWICANA PROVINCIA, *Warwici Comitatus*. Warwickshire.
- WASCONIA. Gascony. *Mem. in Scacc.* H. 5 Edw. I.
- WELLÆ. Wells city in Somersetshire.
- WENTANA CIVITAS. Winchester city.
- WESTMARIA, *Westmoria*, *Westmorelandia*. Westmoreland.
- WESTMONASTERIUM. Westminster city.
- WICCIA. Worcestershire.
- WICHCOMBIA. Wycombe in Buckinghamshire.
- WIGORNIA. Worcester city. *Bract.* fol. 128.
- WILTONIA. Wiltshire.
- WINCELCUMBA, *Winchelcumba*. Wincomb in Gloucestershire.
- WINCESTRIA. Winchester city. *L. Lat. Dict.*

WINCHELSEGA. Winchelsea in Sussex. *L. Lat. Dict.*

WINDELESORUM. Windsor. *Mag. Cart. Johan.* ad fin.

WINDESORA, *Windlesora*, *Windesora*. Windsor in Berkshire.

WINTONIA. Winchester. *Bract. fol.* 188 b.

WITLESIA. Whittlesey in Huntingdonshire.

# Y.

YARUM. Yare in Yorkshire.

YARMUTHIA, *Jernmuthia*, *Garanonum*, *Gariensis ostium*. Yarmouth in Norfolk.



A GLOSSARY  
OF  
LATIN SURNAMES.



# A GLOSSARY

OF

## L A T I N S U R N A M E S .

TAKEN FROM THE APPENDIX TO BLOUNT'S NOMO-LEXICON, WITH CORRECTIONS AND ADDITIONS.

### A.

DE ADURNI PORTU. Etherington.  
ALA CAMPI. Wingfield.  
DE ALBA MARLA. Albemarle.  
DE ALBENEIO, *De Albinaco*. D'Aubene-  
ney, Albiney. *Bract.* fol. 417.  
ALBERICUS, *Albrca*. Aubrey.  
DE ALBO MONASTERIO. Whitchurch.  
*Bract.* fol. 249, 259 b.  
DE ALDITHELEIA. Audley.  
DE ALNETO. Dauney.  
DE ALTA RIPA. Dantry.  
AQUAPONTANUS. Bridgewater.  
DE ARCUBUS. Bowes.  
DE ARIDA VILLA. Dryton or Dreydon.  
DE AULA. Hall.  
DE AUREO VADO. Guldeford.  
AURIFABER. Orfeur. [Goldsmith?]

### B.

DE BAJOCIS. Bacon. *L. Lat. Dict.*  
DE BEDA. Bacon. *L. Lat. Dict.*  
DE BELLA AQUA. Bellow or Bellew.  
DE BELLA FIDE. Beaufoy.  
DE BELLO CAMPO. Beauchamp.  
DE BELLO FAGO. Beaufo. *Bract.* fol.  
350 b.  
DE BELLO FOCO. Beaufeu.  
DE BELLO LOCO. Beaulieu.

DE BELLO MARISCO. Beaumarsh.  
DE BELLO MONTE. Beaumont.  
DE BELLO PRATO. Beaupre.  
DE BELLO SITU. Bellassise.  
DE BENEFACTIS. Benfield.  
BENEVOLUS. Benlowes.  
DE BLOSSEVILLA. Bloville, Blofield.  
DE BONA VILLA. Bonevil.  
DE BONO FOSSATO. Goodrick, or  
Goodrich. *Bract.* fol. 293 b.  
DE BOSCO. Dubois, [Boys, Boyce.  
Wood?] *Bract.* fol. 320, 374.  
DE BOSCO ROARDI. Borhard, [Bur-  
rard?]  
DE BOVIS VILLA. Bovil.  
DE BULIACO. Busli, Bussey. Called  
*de Bully*. *Bract.* fol. 418.  
DE BURGO. Burgh, Burke. [Burrow?]  
*Bract.* fol. 290 b.  
DE BURGO CHARO. Bouchier.

### C.

DE CADURCIS. Chaworth.  
DE CALVO MONTE. Chaumont.  
DE CAMERA. Chamber, Chambers.  
*Bract.* fol. 266 b, 273 b, 304, 356 b.  
CAMBERLANUS. Chamberlain. *Bract.*  
fol. 161.  
DE CAMPANIA. Champney.  
DE CAMPO ARNULFI. Champernoun.  
DE CAMPO FLORIDO. Chamfleur.

DE CANTILUPO. Cantlou. *Bract.* fol. 142 b, 417.

DE CAPRICURIA, *Capreolocuria*. Chervercourt.

DE CAPELLA. Capel.

DE CARO LOCO. Carelieu.

DE CASA DEL. Godshall.

DE CASINETO, *Chasineto*. Cheney, Chedney.

DE CASTELLO MAGNO. Castlemain.

DE CERASO. Cherry.

DE CHAURIS. Chaworth.

CHELIGREVUS. Killigrew. *L. Lat. Dict.*

DE CESTRIA. Chester.

CHIRCHEBEIUS. Kirkby or Kirby.

DE CLARIFAGIO. Clerfay.

DE CLARIS VALLIBUS. Clarival.

DE CLARO MONTE. Clermont.

DE CLIVO FORTI. Clifford.

DE COLUMBARIIS. Columbers.

COCUS. Coke, or Cook. *Bract.* fol. 437 b.

DE CONDUCTU. Chenduit.

DE CORNUBIA. Cornwall.

DE CORVO SPINÆ. Crowthorn.

DE CREPITO CORDE. Creveceur.

CUNETIUS. Kenet.

DE CURVA SPINA. Creithorne.

## D.

DE AYNECURIA, *Daincuriensis*. Daincourt.

DE DACO. [Day or Dane?] *Bract.* fol. 285.

DE DIVA. Dive.

DE DOITO. Brooke.

DISPENSATOR. Le Despencer, Spencer.

DROGO. Drew.

DUCHTIUS. Doughty.

## E.

EASTERLINGUS. Stradling.

DE EBROICIS. Devereux.

DE ERICETO. Brewer.

DE EROLITTO. Erliche.

D'ESTLEGA. Estley or Astley. *L. Lat. Dict.*

EXTRANEUS. L'Estrange. [Strange?] *Mug. Cart.* 1 Hen. III. pr.

## F.

FABER. Smith. *Bract.* fol. 272 b.

DE FAGO. Beech, Beecher.

DE FERRARIIS. Ferrers. *Bract.* fol. 54 b.

DE FILICETO. Fernham.

FILIUS ALANI. Fitz-Alan, [Alanson.]

FILIUS EUSTACHII. Fitz-Eustace.

FILIUS GEROLDI. Fitz-Gerold. *Mag. Cart. Johan.* pr.

FILIUS GUIDONIS. Fitz-Guy, Fitz-With.

FILIUS HENRICI. Fitz-Henry.

FILIUS HEREBERTI. Fitz-Herbert. *Mag. Cart. Johan.* pr.

FILIUS HUGONIS. Fitz-Hugh. *Bract.* fol. 417. *Mag. Cart. Johan.* pr.

FILIUS JACOBI. Fitz-James.

FILIUS JOHANNIS. Fitz-John, [Johnson.] *Bract.* fol. 298. *Fleta*, lib. 2, c. 3, § 9.

FILIUS LAMBERTI. Fitz-Lambert. *Bract.* fol. 292 b.

FILIUS MICHAELIS. Fitz-Michael. *Bract.* fol. 417.

FILIUS PETRI. Fitz-Peter. *Bract.* fol. 225 b, 420 b.

FILIUS RADULPHI. Fitz-Ralph. *Bract.* fol. 298, 418, 421.

FILIUS ROBERTI. Fitz-Robert. [Robertson.] *Bract.* fol. 393 b, 430 b.

FILIUS ROLANDI. Fitz-Roland. *Bract.* fol. 367.

FILIUS SIMONIS. Fitz-Simon. [Fitz-Simmons, Simonson?] *Bract.* fol. 409 b.

FILIUS GULIELMI. Fitz-William. [Williamson?] *Bract.* fol. 275 b, 370 b.

FILIUS WALTERI. Fitz-Walter. *Mag. Cart.* 9 Hen. III.

FLAVUS. Blund, Blount.

DE FLUCTIBUS. Flood.

DE FOLHS. Foulis.  
 DE FONTE AUSTRALI. Southwell.  
 DE FONTE EBRARDI. Fonteverard.  
 DE FONTE LIMPIDO. Sherburne.  
 DE FONTIBUS. Wells. *Mem. in Scacc.*  
 M. 2 & 3 Edw. I.  
 DE FORTI SCUTO. Fortescue.  
 DE FRAXINO. Frenc, Ash. *Bract.* fol.  
 50. *Mem. in Scacc.* H. 5 Edw. I.  
 FRESCOBURNUS. Freshburn.  
 DE FRISCA VILLA. Freshville.  
 DE FOSSA NOVA. Newdike.

**G.**

DE GANDAVO. Gaunt. *L. Lat. Dict.*  
 DE GENEVA. Genevil.  
 DE GENISTETO. Bromfield.  
 GIOVANUS. Young.  
 DE GLANVILLA. Glanville.  
 DE GORNIACO. Gornay. *L. Lat. Dict.*  
 DE GRANA VILLA. Grenville.  
 DE GRANDI VILLA. Granvil.  
 DE GRENTEMAISNILLO. Grantmesnil.  
 DE GROSSO MONTE. Grismond.  
 DE GROSSO VENATORE. Grosvenor.  
 DE GUNTHERI SYLVA. Gunter.

**H.**

DE HAIA. Hay. *L. Lat. Dict.*  
 DE HOSATO. Hosè, Hussey. Blount  
 says he had seen *Johannes Usus Mare*,  
 in Latin, for John Hussey.  
 DE HYDA. Hyde. *Bract.* fol. 351.

**I.**

DE INSULA. Lisle. *Bract.* fol. 234 b,  
 376. *Mag. Cart.* 9 Hen. III.  
 DE INSULA BONA. Lislebone.  
 DE INSULA FONTIS. Lilburne.

**J.**

JODOCUS. Joice.  
 Vol. II

**K.**

DE KAINETO, *Kaineio*. Keynes. [Ken-  
 net or Kenney?]

**L.**

DE LAETO LOCO. Lettley. *L. Lat.*  
*Dict.*  
 DE LATO CAMPO. Bradfield.  
 DE LATO VADO. Bradford.  
 LAURENTII FILIUS. Lawson.  
 DE LEGA. Lee, Lea, Leigh.  
 DE LEICHA, *Lecha*. Leach.  
 DE LISORIIS. Lizurs, Lisors.  
 DE LOGIIS. Lodge.  
 DE LONGA SPATA. Longspee, Lun-  
 gespey. *Bract.* fol. 422 b.  
 DE LONGA VILLA. Longueville.  
*Bract.* 255 b.  
 DE LONGO CAMPO. Longchamp.  
 DE LONGO PRATO. Longmead.  
 LUPELLUS. Lovet, Lovel.  
 LUPUS. Wolf, Love, Loo.

**M.**

MACER. Le Meyre.  
 DE MAGNA VILLA. Mandeville.  
 DE MALIS MANIBUS. Malmains.  
 DE MALO LACU. Mauley. *Bract.* fol.  
 319, 381, 433. *Mag. Cart.* 9 Hen.  
 III.  
 DE MALO LEONE. Malleon. *Mag.*  
*Cart.* 1 Hen. III. pr.  
 DE MALO PASSU. Malpas.  
 DE MALO VISU. Malvisin.  
 MALUS LEPORARIUS. Malevorer.  
 MALUS LUPELLUS. Maulove, Mal-  
 lovel.  
 DE MANNERIIS. Manners.  
 DE MARCI VALLIBUS. Martival.  
 DE MARISCO. Marsh.  
 DE MEDUANA. Maine.  
 DE MELSA. Mews.  
 DE MEDIA VILLA. Middleton.  
 MEDICUS. Leech.

DE MICENIS. Meschines.  
 DE MINERIIS. Miners.  
 DE MONASTERIIS. Musters.  
 DE MOLENDINIS. Molines, [Mills?]  
 MONACHUS. Le Moigne, Monk.  
 DE MONTE. [Mount, Dumont?]  
 DE MONTE ACUTO. Montacute. *Bract.*  
 fol. 63 b, 199 b.  
 DE MONTE ALTO. Montalt, Moald.  
 DE MONTE AQUILÆ. Mounteagle.  
 DE MONTE CANISIO. Montchensey.  
*Bract.* fol. 87 b, 391, 407 b.  
 DE MONTE FIXO. Montfichet.  
 DE MONTE FORTI. Montfort. *Bract.*  
 fol. 417.  
 DE MONTE GOMERICO, *De Monte*  
*Gomery.* Montgomery. *Mem. in Scacc.*  
 H. 22 Edw. I. in dorso.  
 DE MONTE JOVIS. Montjoy.  
 DE MONTE HERMERII. Monthir-  
 mer.  
 DE MONTE PESSONIS. Montpesson,  
 Mompesson.  
 DE MONTE VEGONIS. Montbegon.  
*Bract.* fol. 50 b.  
 DE MORTUO MARI. Mortimer. *Mem.*  
*in Scacc.* P. 22 Edw. I. *Mag. Cart.* 1  
 Hen. III. pr.  
 DE MUSCO CAMPO. Muschamp.  
 DE MORA. More. *Mem. in Scacc.* H.  
 6 Edw. I.

**N.**

DE NODARIIS. Nowres. *Bract.* fol.  
 430 b.  
 DE NOVA TERRA. Newland.  
 DE NOVA VILLA, *De Nevilla.* Nevil.  
 DE NOVO BURGO. Newburgh.  
 DE NOVO CASTELLO. Newcastle.  
 DE NOVO FORO. Newmarch.  
 DE NOVO MERCATO. Newmarch.  
*Bract.* fol. 54 b.

**O.**

DE OILEIO. D'Oyley.

**P.**

DE PALUDE. Marsh.  
 PARMENTARIUS. Taylor.  
 DE PARVA VILLA. Littleton.  
 DE PASCUO LAPIDOSO. Stanley.  
 DE PAVILIDRO, *Pauliaco.* Paveley.  
 DE PAVILLIANO. Peiton. *L. Lat.*  
*Dict.*  
 DE PECCATO. Peche, Peck.  
 DE PETRA PONTE. Pierpont.  
 DE PEDE PLANCO. Pauncefot.  
 PELLIPARIUS. Skinner.  
 DE PICTAVIA. Peyto.  
 DE PLANTAGENETÆ. Plantagenet.  
 DE PORCELLIS. Purcell.  
 POULTENEIUS. Poultney. *L. Lat.*  
*Dict.*  
 DE PRAERIIS. Praers.  
 DE PULCHRO CAPELLITIO. Fair-  
 fax.  
 DE PUTEACO. Pusac, Pudsey.

**Q.**

DE QUERCETO. Cheney.  
 DE QUINCIACO. Quincy.

**R.**

DE RADEONA. Rodney. *L. Lat. Dict.*  
 DE RAGENEIA. Raleigh.  
 DE REDVERIIS. Rivers.  
 REGINALDUS. Reynolds.  
 DE RICO MONTE. Richmond.  
 DE RIPARIIS. Rivers. *Mem. in Scacc.*  
 M. 2 and 3 Edw. I.  
 ROTARIUS. Wheeler.  
 DE RUBRA MANU. Redmain.  
 DE RUBRA SPATHA. Rospear, Rous-  
 pee, Rooper, Roper.  
 DE RUBRO CLIVO. Redcliff, Radcliff.  
 DE RUPE. Roche, Rock, [Laroche.]  
*Bract.* 146, 146 b, 280, 302 b.  
 DE RUPE FORTI. Rochfort.

DE RUPE SCISSA. Cutcliff.

RUFUS. Rous.

### S.

DE SABAUDIA. Savoy.

DE SACRA QUERCU. Holyoak.

DE SACRO BOSCO. Holywood.

DE SACRO FAGO. Holybeech, Hollebeech.

DE SACRO FONTE. Holybrook.

SAGITTARIUS. Archer.

DE SAIO. Say.

DE SALCETO. Saucey.

DE SALCHAVILLA. Salkeld.

DE SALICOSA MARA. Wilmore.

DE SALICOSA VENA. Salvein.

DE SALSO MARISCO. Saltmarsh.

DE SALTU CAPELLÆ. Sacheverel.

DE SANCTA BARBARA. St. Barb, Senbarb, Simbarb.

DE SANCTA CLARA. St. Clare, [St. Clair,] Sencleer, Sinclere.

DE SANCTA TERRA. Holyland.

DE SANCTO ALEMONDO. Salmon.

DE SANCTO AMANDO. St. Amand, S'amand. *Bract.* fol. 312, 417.

DE SANCTO AUDOENO. St. Owen.

DE SANCTO ANDOMARO. St. Omer. *L. Lat. Dict.*

DE SANCTO GELASIO. Singlis.

DE SANCTO GEORGIO. St. George. *Bract.* fol. 83 b, 349.

DE SANCTO JOHANNE. St. John. *Bract.* fol. 339 b. *Mag. Cart.* 9 Hen. III.

DE SANCTO LAUDO. St. Laud, Sentlo, Senlo.

DE SANCTO LIZIO. St. Liz, Senliz, Seyton.

DE SANCTO LEODEGARIO. St. Le-ger, Sellenger.

DE SANCTO LUPO. St. Low, Sentlow.

DE SANCTO MARTINO. St. Martin, Semarton.

DE SANCTO MAURO. St. Maur, Semaur.

DE SANCTO MEDARDO. Semark.

DE SANCTO PAULO. St. Paul, Sampol.

DE SANCTO PETRO. St. Peter, St. Pierre, Sampier.

DE SANCTO VEDASTO. Foster.

DE SANCTO WALLERICO. St. Wallere.

DE SANDWICO. Sandwich.

DE SAXO FERRATO. Ironston, Ironson.

DE SCALARIIS. Scales.

SCISSOR. Cutter, Taylor? *Bract.* fol. 141 b.

DE SICCA VILLA. Sackville.

DE SOLARIIS. Solers.

DE SPINETO. Spiney.

DE STAGNO. Poole.

DE STIPITE SICCO. De la Zouche.

SUPER TYSAM. Surteys.

DE SYLVA. Weld.

DE SUTHLEIA, *Sutleia*. Suthley, Sudley. *L. Lat. Dict.*

### T.

DE TANAIA. Taney.

DE TANKARDI VILLA. Tankerville.

TEUTONICUS. Teys.

DE TULKA. Toke, Tooke.

DE TURBIDA VILLA. Turberville.

DE TURPE VADO. Fulford.

DE TURRI PARVA. Torel, Tyrrel.

### U.

DE UMBROSA QUERCU. Dimmock.

DE URTICO. Lorti, Lort.

### V.

DE VADO BOUM. Oxford.

DE VADO SAXI. Stanford.

DE VALLE. Wale, [Duval?]

DE VALLE TORTA. Vautort.

DE VALLIBUS. Vaux.

DE VETERI AULA. Oldhall, Oldham.

DE VETERI PONTE. Vipont. *Bract.* fol. 194 b. *Mag. Cart.* 9 Hen. III.

DE VICARIIS. Vicars.

DE VILLA MAGNA. Mandeville.

DE VILLARIIS. Villers.

DE VILLA TORTA. Croketon.

DE VINO SALVO. Vinesalf.

# W.

WALERANUS. Walrand. *Bract.* fol. 436.

DE WARNEVILLA. Willoughby. *L. Lat. Dict.*

DE WARRENA. Warren. *L. Lat. Dict.*

DE WATELEGA. Wateley, Wheatley.

WOLSÆUS, *Volvesius*. Wolsey. *L. Lat. Dict.*